BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Welfare and Institutions Code Sections 1800, 1801 and 1801.5, as Amended by Statutes 1984, Chapter 546 and Statutes 1998, Chapter 267; Filed on May 10, 1999, By the County of Alameda, Claimant.	**Case No.: 98-TC-13** *Extended Commitment – Youth Authority* **ADMINISTRATIVE RECORD**

Reconsideration Order: Statutes 2004, Chapter 316, Section 3, Subdivision (b) (Assem. Bill No. 2851)	1

Administrative Record

I HEREBY CERTIFY that each of the following documents is a true and correct copy of the corresponding documents contained in the administrative record of the Commission on State Mandates for the *Extended Commitment – Youth Authority* Test Claim.

I further certify that the above-listed documents constitute the record of the original administrative proceedings before the Commission on State Mandates on the *Extended Commitment – Youth Authority* test claim.

Dated:

Paula Higashi, Executive Director

Assembly Bill No. 2851

CHAPTER 316

An act to amend Section 17581.5 of the Government Code, relating to local mandate reimbursement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 25, 2004. Filed with Secretary of State August 25, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2851, Laird. Budget Act: state mandates.

(1) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

Existing statutory law provides that a school district may not be required to implement or give effect to a statute imposing a state mandate for a specified period if it is identified by the Legislature in the Budget Act as being suspended. Existing law provides that this suspension provision is applicable only to specified mandates.

This bill would additionally make this suspension provision applicable to state mandates relating to certain investment reports and county treasury oversight committees.

(2) Existing law provides that the Commission on State Mandates shall not find costs to be mandated by the state if, among other things, the local agency or school district has authority to levy charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Existing law, the Surface Mining and Reclamation Act of 1975, requires local agencies, within 12 months of receiving mineral information and of being designated an area of statewide or regional significance, and in accordance with state policy, to establish mineral resource management policies in their general plans. Existing law also authorizes these local agencies to impose a fee upon mining operations to cover the reasonable costs incurred in implementing the act.

This bill would state that the Legislature finds and declares that the act no longer imposes a reimbursable mandate under these provisions because local agencies subject to the act have authority to levy fees to pay for the cost of the program mandated by the act.

(3) The Budget Act of 2003 provides that state-mandated local programs relating to, among others, Democratic Party presidential delegates, election materials, and specified county social services are suspended during the 2003–04 fiscal year.

This bill would state that the Legislature finds and declares that specified statutes relating to Democratic Party presidential delegates and certain county social services no longer constitute reimbursable mandates under Section 6 of Article XIII B of the California Constitution because they have been repealed.

(4) This bill also would direct the Commission on State Mandates, by January 1, 2006, to reconsider whether specified statutes continue to constitute reimbursable mandates in light of federal statutes enacted and federal and state court decisions rendered since enactment of these mandates.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 17581.5 of the Government Code is amended to read:

17581.5. (a) A school district may not be required to implement or give effect to the statutes, or portion thereof, identified in subdivision (b) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of school districts pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) This section applies only to the following mandates:

(1) The School Bus Safety I (CSM-4433) and II (97-TC-22) mandates (Chapter 642 of the Statutes of 1992; Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).

(2) The School Crimes Reporting II mandate (97-TC-03; and Chapter 759 of the Statutes of 1992 and Chapter 410 of the Statutes of 1995).

(3) Investment reports (96-358-02; and Chapter 783 of the Statutes of 1995 and Chapters 156 and 749 of the Statutes of 1996).

(4) County treasury oversight committees (96-365-03; and Chapter 784 of the Statutes of 1995 and Chapter 156 of the Statutes of 1996).

SEC. 2. The Legislature hereby finds and declares that, notwithstanding a prior determination by the Board of Control, acting as the predecessor agency for the Commission on State Mandates, and pursuant to subdivision (d) of Section 17556 of the Government Code, the state-mandated local program imposed by Chapter 1131 of the Statutes of 1975 no longer constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because subdivision (e) of Section 2207 of the Public Resources Code, as added by Chapter 1097 of the Statutes of 1990, confers on local agencies subject to that mandate authority to levy fees sufficient to pay for the mandated program.

SEC. 3. Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted:

(a) Sex offenders: disclosure by law enforcement officers (97-TC-15; and Chapters 908 and 909 of the Statutes of 1996, Chapters 17, 80, 817, 818, 819, 820, 821, and 822 of the Statutes of 1997, and Chapters 485, 550, 927, 928, 929, and 930 of the Statutes of 1998).

(b) Extended commitment, Youth Authority (98-TC-13; and Chapter 267 of the Statutes of 1998).

(c) Brown Act Reforms (CSM-4469; and Chapters 1136, 1137, and 1138 of the Statutes of 1993, and Chapter 32 of the Statutes of 1994).

(d) Photographic Record of Evidence (No. 98-TC-07; and Chapter 875 of the Statutes of 1985, Chapter 734 of the Statutes of 1986, and Chapter 382 of the Statutes of 1990).

SEC. 4. The Legislature hereby finds and declares that the following statutes no longer constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because provisions containing the reimbursable mandate have been repealed:

(a) Democratic Party presidential delegates (CSM-4131; and Chapter 1603 of the Statutes of 1982 and Chapter 8 of the Statutes of 1988, which enacted statutes that were repealed by Chapter 920 of the Statutes of 1994).

(b) Short-Doyle case management, Short-Doyle audits, and residential care services (CSM-4238; and Chapter 815 of the Statutes of 1979, Chapter 1327 of the Statutes of 1984, and Chapter 1352 of the Statutes of 1985, which enacted statutes that were repealed by Chapter 89 of the Statutes of 1991).

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary statutory changes to fully implement the Budget Act of 2003 at the earliest possible time, it is necessary that this act take effect immediately.

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COMMISSION ON STATE MANDATES

NOTICE AND AGENDA

State Capitol, Room 126
Sacramento, California

November 30, 2000

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 October 26, 2000

III. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items with an asterisk, the Executive Director will include the item(s) on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Items 2 - 8.

A. ADOPTION OF PROPOSED STATEMENT OF DECISION BY HEARING OFFICER

Item 2 Remanded by the Supreme Court in *County of San Diego* v. *State of California, et al.* (1997) 15 Cal.4th 68, "to determine whether, and by what amount, the statutory standards of care (e.g., Health & Saf. Code, § 1442.5, former subd. (c); Welf. & Inst. Code, §§ 10000, 17000) forced San Diego to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which San Diego is entitled." - Case No. CSM-R-2046843 and OAH No. N2000020064

B. TEST CLAIMS CONTINUED FROM OCTOBER 26, 2000

Item 3 *Animal Adoption* - 98-TC-11
County of Los Angeles, City of Lindsay, Southeast Area Animal Control Authority, and Counties of Fresno and Tulare, Co-Claimants
Civil Code Sections 1815, 1816, 1834, 1834.4, 1845—1847, 2080
Food and Agriculture Code Sections 17005, 17006, 31108, 31752, 31752.5, 31753, 31754, 32001, 32003
Penal Code Sections 597.1 and 599d
Statutes of 1998, Chapter 752
Amended to add: Business and Professions Code Section 4855
Statutes of 1978, Chapter 1314
California Code of Regulations, Title 16, Section 2031 (renumbered Section 2032.3 on May 25, 2000

Item 4 *Emergency Apportionments* - 97-TC-14
Alameda County Office of Education, Claimant
Education Code Sections 41320, 41320.1, 41320.2, 41320.3, 41321, 41322, 41323, 41325, 41326, 41326.1, 41327, 41328
Statutes of 1981, Chapter 70; Statutes of 1987, Chapter 990; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 171; Statutes of 1991, Chapter 1213; Statutes of 1993, Chapters 589 and 924; Statutes of 1994, Chapter 1004; Statutes of 1995, Chapters 50 and 525

C. TEST CLAIMS

Item 5 *Mentally Disordered Offenders' Extended Commitment Proceedings* 98-TC-09
County of Los Angeles, Claimant
Penal Code Section 2970
Statutes of 1985, Chapter 1418; Statutes of 1986, Chapter 858; Statutes of 1988, Chapters 657 and 658; Statutes of 1989, Chapter 228; Statutes of 1991, Chapter 435

Item 6 *Extended Commitment, Youth Authority* - 98-TC-13
County of Alameda, Claimant
Statutes of 1984, Chapter 546; Statutes of 1998, Chapter 267

Item 7 *Elder Abuse, Law Enforcement Training* - 98-TC-12
City of Newport Beach, Claimant
Penal Code Section 13515
Statutes of 1997, Chapter 444

Item 8 *Employee Benefits Disclosure* - CSM-4502, 98-TC-03
Clovis Unified School District, Claimant
Education Code Sections 42140, 42141 and 42412
Statutes of 1994, Chapter 650; Statutes of 1995, Chapter 525; Statutes of 1996, Chapter 1158 and California Department of Education Management Advisories Numbers 95-03 and 95-07

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 9* *Financial and Compliance Audits,* CSM No. 4498/4498A
Sweetwater Union High School District and San Diego County Office of Education, Co-Claimants
Education Code Sections 1040, 14501, 14502, 14503, 14504, 14505, 14506, 14507, 41020, 41020.2, 41202.3, and 41023
Statutes of 1995, Chapter 476, et al.

Item 10* *School Site Councils and Brown Act Reform* - CSM 4501 and Portions of CSM 4469 relating to Government Code Section 54952
Kern Union High School District, San Diego Unified School District, and County of Santa Clara, Co-Claimants
Education Code Section 35147
Government Code Section 54952
Statutes of 1993, Chapter 1138; Statutes of 1994, Chapter 239

Item 11* *County Treasury Oversight Committees* - 96-365-03
County of San Bernardino, Claimant
Government Code Sections 27130 et seq.
Statutes of 1995, Chapter 784; Statutes of 1996, Chapter 156

B. ADOPTION OF PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Item 12* *Open Meetings Act* – 98-PGA-08
County of Los Angeles, Requester
Statutes of 1986, Chapter 641

C. ADOPTION OF REGULATIONS PURSUANT TO GOVERNMENT CODE SECTION 17527, SUBDIVISION (g)

Item 13* Adoption of Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5 - Applications for Findings of Significant Financial Distress. Articles 1 and 6.5, Amending Sections 1181.2, 1181.3, 1186.5, 1186.51. 1186.52, and 1186.72; Renumbering and Amending Sections 1186.6, 1186.61, and 1186.62; and Adding New Sections 1186.6, 1186.61, and 1186.62, As Modified After Close of Public Comment Period.

VI. EXECUTIVE DIRECTOR'S REPORT (info)

Item 14 Workload, Scheduling, Local Claims Bill, Next Agenda

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.,* Case Number SCV52190, in the Superior Court of the State of California, County of Los Angeles.
2. *County of Sonoma v. Commission on State Mandates, et al.,* Case Number A089524, in the Appellate Court of California, First Appellate District, Division 1.

3. *San Diego Unified School District v. Commission on State Mandates, et al.,* Case Number GIC 737638, in the Superior Court of the State of California, County of San Diego.
4. *Long Beach Unified School District v. Commission on State Mandates,* Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.
5. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al,* Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
6. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara,* Case Number 00CS00866, in the Superior Court of the State of California, County of Sacramento.
7. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC751187, in the Superior Court of the State of California, County of San Diego.
8. *County of Los Angeles v. Commission on State Mandates, et al.,* Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
9. *County of San Bernardino v. Commission on State Mandates, et al.* Case Number SCVSS69731, in the Superior Court of the State of California, County of San Bernardino.
10. *Department of Finance of the State of California v. Commission on State Mandates, et al.*, Case No. 00CS01446, in the Superior Court of the State of California, County of Sacramento.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd.(e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from Personnel Sub-Committee.

IX. REPORT FROM CLOSED EXECUTIVE SESSION

ADJOURNMENT

ITEM 6

TEST CLAIM
STAFF ANALYSIS

Welfare and Institutions Code Sections 1800, 1801 and 1801.5
Statutes of 1984, Chapter 546
Statutes of 1998, Chapter 267

Extended Commitment—Youth Authority

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ITEM 6

TEST CLAIM
FINAL STAFF ANALYSIS

Welfare and Institutions Code Sections 1800, 1801 and 1801.5
Statutes of 1984, Chapter 546
Statutes of 1998, Chapter 267

Extended Commitment—Youth Authority

EXECUTIVE SUMMARY

The test claim legislation addresses changes in the procedures for the extended commitment of dangerous juvenile offenders subject to the jurisdiction of the California Youth Authority (CYA). Under California law, the CYA may not retain a ward in custody beyond the age of 25.

In 1963, the Legislature established the extended commitment procedure for dangerous juvenile offenders. The procedures authorized the former Youth Authority Board to determine that the discharge of a ward would be physically dangerous to the public due to the individual's mental or physical deficiency, disorder, or abnormality and to initiate a civil process to extend the ward's commitment for an additional two years. The due process procedures provided for the action to be filed in the committing court, for parental notification for minors, court appointment of counsel for indigent wards, examination of witnesses and evidence, and a full hearing. In 1971, the Legislature amended the original statutory scheme by adding a procedure for persons ordered returned to the Youth Authority to file a written demand that the question of whether he or she is physically dangerous to the public be tried by a jury in the superior court of the committing county. Prior to the 1984 test claim legislation, state law did not specify who should represent the Youth Authority Board and its successor the Youthful Offender Parole Board (YOPB) in extended commitment proceedings. The legislative history indicates that the Attorney General declined to represent the YOPB, maintaining that it was a local responsibility. As a result, the prosecuting district attorney petitioned the committing court on behalf of the YOPB.

The test claim legislation made technical and substantive changes to these procedures. Since 1984, state law has required the YOPB to request the prosecuting district attorney represent the board in requesting an extended commitment of a dangerous juvenile offender.

- Retain necessary experts, investigators, and professionals to prepare for preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards.

Staff further concludes that costs incurred by counties for indigent representation by public defenders, custody, and transportation are ineligible for reimbursement under section 6, article XIII B of the California Constitution and Government Code section 17514 because these costs resulted from statutes enacted prior to January 1, 1975.

Recommendation

Staff recommends that the Commission adopt the Staff Analysis, which partially approves the *Extended Commitment – Youth Authority* Test Claim for the above listed activities.

Claimant

County of Alameda

Chronology

05/10/99	Claimant files Test Claim with the Commission
06/17/99	Department of Finance files response
10/05/00	Draft Staff Analysis issued
10/23/00	County of Los Angeles files response to Draft Staff Analysis
11/08/00	Claimant files response to Draft Staff Analysis

Background

The test claim legislation makes technical changes to procedures for the extended commitment of dangerous juvenile offenders subject to the jurisdiction of the California Youth Authority (CYA) and requires the YOPB to request representation from the prosecuting attorney. Under California law, the CYA may not retain a ward in custody beyond the age of 25.

In 1963, the Legislature established the extended commitment procedure for dangerous juvenile offenders under Welfare and Institutions Code section 1800 et seq. [1] The procedures authorized the former Youth Authority Board to determine that the discharge of a ward would be physically dangerous to the public due to the individual's mental or physical deficiency, disorder, or abnormality and to initiate a civil process to extend the ward's commitment for an additional two years. [2] The due process procedures provided for the action to be filed in the committing court, for parental notification for minors, court appointment of counsel for indigent wards, examination of witnesses and evidence, and a full hearing. In 1971, the Legislature amended the original statutory scheme by adding a procedure for persons ordered returned to the Youth Authority to file a written demand that the question of whether he or she is physically dangerous to the public be tried by a jury in the superior court of the committing county. The extended commitment of dangerous CYA wards is not considered penal in nature, but civil. The CYA is under an affirmative duty to provide treatment. If the ward is not dangerous due to a physical or mental condition, or the condition is not treatable, the ward cannot be held beyond his or her release date.[3]

Prior to the 1984 test claim legislation, state law did not specify who should represent the Youth Authority Board and its successor the Youthful Offender Parole Board (YOPB) in extended commitment proceedings. The legislative history indicates that the Attorney General declined to represent the YOPB, maintaining that it was a local

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[1] All cites will be to Welfare and Institutions Code unless otherwise noted.

[2] The Youthful Offender Parole Board (YOPB) may seek the extended commitment of dangerous CYA wards in two-year increments. See section 1802.

[3] *People v. Gary* (1971) 5 Cal.3d 296, 302. See Exhibit A, page 104.

responsibility. As a result, the prosecuting district attorney petitioned the committing court on behalf of the YOPB.

The test claim legislation amended section 1800 to provide that, if the Youthful Offender Parole Board (YOPB) determines the discharge of a CYA ward would be physically dangerous to the public due to the individual's mental or physical deficiency, disorder, or abnormality, the YOPB shall request the prosecuting district attorney to petition the committing court for an order directing the ward to remain in the custody of the YOPB. [4]

The YOPB's request to the prosecuting district attorney initiates the extended commitment process.

1. Petitioning the Court

The prosecuting district attorney petitions the court to extend the commitment of dangerous CYA wards by submitting a written statement of facts. The written statement supports the YOPB's opinion that the CYA ward poses a danger to the public. If on its face the petition supports a finding of probable cause, then the court is required to order a preliminary hearing.

2. Preliminary Hearing

At the preliminary hearing, the court must find probable cause that, if released, the CYA ward poses a danger to the public. Prior to the 1998 amendment to section 1801, the standard of proof at the preliminary hearing was beyond a reasonable doubt. [5] The test claim legislation lowered the burden to probable cause.

At this hearing, evidence may be presented and witnesses called. If the court makes a finding of probable cause that the CYA ward's release poses a danger to the public, the court is required to order the extended commitment of the ward. If the court makes such an order, by right, the case will then proceed to stage three, a jury trial.

3. Trial

Prior to the 1984 amendment to section 1801.5, it was uncertain whether jury unanimity and proof beyond a reasonable doubt was required to extend the commitment of a dangerous CYA ward. [6] The 1984 amendment reflects the court's holding in *People v. Vernal D.* (1983) 142 Cal.App.3d 29, [7, 8] which held jury unanimity and proof beyond a reasonable doubt are constitutionally required.

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[4] The determination of physically dangerous and mental or physical deficiency, disorder, or abnormality is subject to a reasonable interpretation. (*People v. Cavanaugh* (1965) 234 Cal.App.2d 316, 323.) See Exhibit B, page 115.

[5] The test claim legislation included only minor and technical changes to section 1801.

[6] The test claim legislation included only minor and technical changes to section 1801.

[7] See Exhibit C, page 117.

[8] See Exhibit G, page 146.

If the court orders the extended commitment of a dangerous CYA ward after a preliminary hearing, the ward has a right to a jury trial unless waived. At the trial the jury affirms or denies the court's extended commitment order by answering the following question: "Is the person physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality?"[9] To affirm the court's order the jury must unanimously decide beyond a reasonable doubt that the CYA ward poses a danger to the public if released.

Claimant's Contentions

Claimant contends that the test claim legislation constitutes a reimbursable state mandated program by shifting the responsibility for petitioning the committing court to the prosecuting attorney, or in practice, the prosecuting district attorney.

Claimant further concurs with County of Los Angeles' position that indigent defense, transportation and custody costs incurred solely to implement this test claim legislation should be found to be reimbursable activities.

Interested Party's Contentions

The County of Los Angeles agrees with the staff's analysis. The County of Los Angeles, however, submits that, in addition to state reimbursement for the prosecuting district attorney's costs, the public defender's costs should be reimbursed by the state. The County of Los Angeles also asserts that counties should be reimbursed for transportation and custody costs of the CYA ward.

Department of Finance's Contentions

The Department of Finance (DOF) agrees with claimant, and finds that the test claim legislation imposes a reimbursable state mandated program.

STAFF ANALYSIS

In order for a statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does not mandate or require local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create an increased or higher level of service over the former required level of service. The California Supreme Court has defined the word "program" subject to article XIII B, section 6, of the California Constitution as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

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[9] Government Code section 1801.5.

Finally, the new program or increased level of service must impose "costs mandated by the state" pursuant to Government Code section 17514.[10]

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation constitute a new program or higher level of service and impose costs mandated by the state?
- Are costs for indigent defense, custody, and transportation subject to reimbursement under article XIII B, section 6 of the California Constitution?

These issues are addressed below.

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

Article XIII B, section 6 of the California Constitution states that "whenever the Legislature or any state agency *mandates* a new program or higher level of service *on any local government*, the state shall provide a subvention of funds." (Emphasis added.)

Thus, in order for a test claim statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does not mandate or require local agencies to perform a task, then article XIII B, section 6 is not triggered. In such a case, compliance with the test claim statute is within the discretion of the local agency.

Section 1800 of the test claim legislation requires the YOPB chairman to request that the prosecuting district attorney petition the committing court to extend the commitment of dangerous CYA wards. However, the test claim legislation does not require the prosecuting district attorney to petition the committing court on the behalf of the YOPB. In fact, the test claim legislation states, "[t]he prosecuting attorney shall promptly notify the [YOPB] of a decision not to file a petition." Furthermore, the legislative history provides that the prosecuting district attorney's prompt notification would allow the YOPB time to contact the Attorney General's Office, so it could timely file the petition on YOPB's behalf.[11] Thus, the prosecuting district attorney's responsibility to petition the committing court on behalf of the YOPB can be interpreted as optional. If this were the case, the test claim legislation would not be subject to reimbursement under article XIII B.

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[10] Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

[11] Assembly Criminal Law and Public Safety Committee Bill Analysis, dated April 4, 1984. See Exhibit E, page 139.

However, the legislative history also indicates that the Attorney General's Office has continually declined to file petitions to extend the commitment of dangerous CYA wards on YOPB's behalf.[12] The Attorney General's Office maintains that it is a local responsibility.[13] As a result, the prosecuting district attorney has always petitioned the committing court on behalf of the YOPB. Thus, the 1984 amendment to section 1800 did nothing more than codify this existing practice.[14, 15]

Furthermore, the California Supreme Court has held that the prosecuting district attorney has the exclusive authority to prosecute individuals on behalf of the public.[16] This does not mean that the prosecuting district attorney is required to prosecute all individuals committing public offenses. The decision whether or not to prosecute is left to the discretion of the prosecuting district attorney.[17] However, the court in *Kottmeirer v. Municipal Court*, stated that representation by the district attorney is for the benefit of the people, and if a prosecuting district attorney does not prosecute a case involving serious issues of public concern, the prosecuting district attorney would be in gross dereliction of his duty to the people of the state.[18, 19]

In the present case, staff finds that the prosecuting district attorney is faced with two choices: (1) petition the court to extend the commitment of dangerous CYA wards on behalf of YOPB; or (2) decline to petition the court on behalf of YOPB, and allow dangerous CYA wards to be released in the community. If the prosecuting district attorney declines to represent the YOPB, the people of that county, and the people of the state, will not have the benefit of representation before the court on an issue of serious concern—whether to release a dangerous CYA ward into the community. The courts have held that this lack of representation by the district attorney is a gross dereliction of duty to the people of the state. Therefore, staff finds that the test claim legislation requires the prosecuting district attorney to petition the committing court for the extended commitment of dangerous CYA wards on behalf of the YOPB.

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[12] California Youth Authority Bill Analysis, dated March 2, 1984. See Exhibit F, page 141.

[13] *Ibid.*

[14] *Ibid.*

[15] Government Code section 17565 states, "If a local agency or school district, at its option, has been incurring cost which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

[16] *People v. Eubanks* (1996) 14 Cal.4th 580, 588-590. See Exhibit D, pages 128-129.

[17] *Ibid.*

[18] *Kottmeirer v. Municipal Court* (1990) 220 Cal.App.3d 602, 609. See Exhibit H, page 156.

[19] Staff notes that the Court's statements in *Eubanks* and *Kottmeirer* are in the context of criminal prosecutions. However, the extended commitment process requires the prosecuting district attorney to civilly prosecute dangerous CYA wards, which is similar to criminal prosecutions. Both can result in confinement of the individual. Moreover, the test claim legislation provides the CYA wards facing extended commitment are entitled to all the rights guaranteed under the federal and state constitutions in criminal proceedings. Therefore, staff finds that the use of case law surrounding criminal prosecutions is appropriate.

Accordingly, staff concludes that the test claim legislation is subject to article XIII B, section 6 of the California Constitution.

Issue 2: Does the test claim legislation constitute a new program or higher level of service and impose costs mandated by the state?

Section 1800 of the test claim statute requires the prosecuting district attorney to represent the YOPB in extended commitment proceedings for dangerous CYA wards. In this regard, the prosecuting district attorney is required to perform the following activities:

- Review the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
- Prepare and file petitions with the superior court;
- Represent the YOPB in the preliminary hearing and civil trial; and
- Retain necessary experts, investigators, and professionals for the preliminary hearing and civil trial;
- Interview potential witnesses for the preliminary hearing and civil trial.

Representing the state in an extended commitment proceeding for a dangerous CYA ward in California is a peculiarly governmental function administered by a local agency as a service to the public. Moreover, the test claim legislation imposes unique requirements upon counties that do not apply generally to all residents and entities of the state. Therefore, staff finds that county representation of the YOPB in extended commitment proceedings constitutes a "program" within the meaning of section 6, article XIII B of the California Constitution.[20]

Under prior law, the YOPB, like any state agency, was required to request representation from the Attorney General to petition the committing court to extend the commitment of a dangerous CYA ward. However, according to the legislative history, the Attorney General's Office continually declined to file petitions to extend the commitment of dangerous CYA wards and maintained that it is a local responsibility.

The test claim statute now requires the YOPB to request representation from the prosecuting district attorney. Although district attorneys may have represented the YOPB under prior law, such representation was voluntary. Government Code section 17565 states, "If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate." Accordingly, staff finds that voluntary representation of the YOPB under prior law does not bar reimbursement for costs incurred by prosecuting district attorneys after the operative date of the mandate.

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[20] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

Therefore, staff concludes that the section 1800 of the test claim legislation imposes a new program or higher level of service upon prosecuting district attorneys, within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state under Government Code section 17514 for the new activities described above.

Issue 3: Are costs for indigent defense, custody, and transportation subject to reimbursement under article XIII B, section 6, of the California Constitution?

The Claimant and the County of Los Angeles now assert that costs for the public defender representing indigent CYA wards at extended commitment proceedings, and the CYA ward's custody and transportation costs during the extended commitment proceedings should be reimbursed under this test claim. However, the County overlooks the fact that the test claim statutes did not create the extended commitment proceeding. Statutes of 1963, Chapter 1693 established the extended commitment proceeding.

Article XIII B, section 6 of the California Constitution reads in pertinent part:

> "Whenever the Legislature... mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the cost of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for...legislative mandates enacted prior to January 1, 1975...."

Government Code section 17514, further specifies in pertinent part:

> ""Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975 ... which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

Under the original enactment, if the CYA ward was unable to provide his or her own counsel, state law required the court to appoint counsel to represent him.[21] This requirement remains unaffected by the test claim legislation and is not subject to reimbursement under article XIII B, section 6 and Government Code section 17514 because it was enacted prior to 1975. Likewise, staff finds that custody and transportation costs are not reimbursable because counties would have incurred these costs prior to 1975.

Although the County cites other test claims to support its contention that public defender, custody and transportation costs should be reimbursed, these claims are distinguishable from the *Extended Commitment – Youth Authority Test Claim*. Each of

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[21] Section 1801 as added by Statutes of 1963, Chapter 1693.

the test claims cited, *Mentally Disordered Sexual Offenders, Not Guilty by Reason of Insanity, and Sexually Violent Predators,* is based on statutes which were enacted after 1975.

Therefore, staff finds that the Claimant and the County of Los Angeles' request for reimbursement of public defender, custody and transportation costs should be denied because these costs are ineligible for reimbursement under article XIII B, section 6 and Government Code section 17514.

Conclusion

Based on the foregoing, staff concludes that section 1800 of the test claim legislation imposes a reimbursable state-mandated program upon counties within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities being performed by the prosecuting attorney:

- Review the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
- Prepare and file petitions with the superior court for the extended commitment of dangerous CYA wards;
- Represent the state in preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards;
- Retain necessary experts, investigators, and professionals to prepare for preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards.

Staff further concludes that costs incurred by counties for indigent representation by public defenders, custody, and transportation are ineligible for reimbursement under section 6, article XIII B of the California Constitution and Government Code section 17514 because these costs resulted from statutes enacted prior to January 1, 1975.

Recommendation

Therefore, staff recommends that the Commission adopt the staff analysis, which partially approves the *Extended Commitment - Youth Authority* Test Claim for the above listed activities.

5 Cal.3d 296
486 P.2d 1201, 96 Cal.Rptr. 1
(Cite as: 5 Cal.3d 296)

In re GARY W., a Person Coming Under the Juvenile Court Law. THE PEOPLE, Plaintiff and Respondent, v. GARY W., Defendant and Appellant.

Crim. No. 15215.
Supreme Court of California, In Bank.
July 7, 1971.

SUMMARY

The trial court entered an order that a youth whose discharge from the Youth Authority was otherwise mandatory remained subject to control by the authority for an additional period of two years until his twenty-third birthday. The youth had originally been committed when he was 19 on a finding of the juvenile court that he had molested a child, and the order for further detention was made pursuant to Welf. & Inst. Code, §§ 1800-1803, on a finding that he was a person who would be physically dangerous to the public due to his mental or physical deficiency, disorder, or abnormality. The trial court's determination of "dangerousness" was made following a hearing at which both the Youth Authority and the ward presented evidence on that issue. There was no statutory provision for a jury trial and no jury was summoned. (Superior Court of Los Angeles County, No. 275-631, Robert A. Wenke, Judge.)

The Supreme Court vacated the order of the trial court and remanded the matter for a jury trial, under the civil commitment procedures provided for suspected mentally disordered sex offenders and narcotics addicts, on the issue of whether the ward was, because of mental or physical deficiency, disorder, or abnormality, physically dangerous to the public. The court took the view that the right to trial by jury in such a proceeding was a requirement of both due process of law and equal protection of the laws. It was pointed out that the Legislature had seen fit to extend the right to trial by jury to other classes of persons subject to civil commitment proceedings and that there was no compelling state purpose for a distinction. Extension of the term under the circumstances provided by statute was held not violative of the Eighth Amendment's proscription of cruel and unusual punishment, in that such commitment was for treatment for the underlying cause of the ward's dangerousness. No abuse of discretion was found in the trial court's handling of the ward's discovery requests. (Opinion by Wright, C. J., expressing the unanimous decision of the court.)

HEADNOTES

Classified to California Digest of Official Reports.

(1) Delinquent, Dependent, and Neglected Children § 31(4)--Youth Correction--Commitment to Youth Authority--Extending Term of Control.
Confinement of a Youth Authority ward for treatment pursuant to Welf. & Inst. Code, §§ 1800-1803, for a period beyond the date on which his release would otherwise be mandatory does not violate the Eighth Amendment's proscription of cruel and unusual punishment; while potential danger to the public is made the criterion on which jurisdiction to order continued control rests, the Legislature has also specified that if the court finds that discharge of the ward would be physically dangerous, the court shall order the Youth Authority to continue the treatment of such person; thus, the authority is under the affirmative duty to provide treatment for the underlying cause of the ward's dangerousness, and one not receiving treatment may seek his release through appropriate habeas corpus procedures.

[See Cal.Jur.2d, Delinquent, Dependent and Neglected Children, § 23.]

(2a, 2b, 2c) Delinquent, Dependent, and Neglected Children § 31(4)--Youth Connection--Commitment to Youth Authority--Extending Term of Control.
A Youth Authority ward is entitled to a trial by jury in proceedings to confine him pursuant to Welf. & Inst. Code, §§ 1800-1803, for a period beyond the date on which his release would otherwise be mandatory, even though there is no statutory provision therefor, since there is no compelling state purpose for a distinction between such wards and other classes of persons subject to civil commitment proceedings, as to which the Legislature has extended the right to trial by jury, such right is a requirement of both due process of law and equal

protection of the law, and trial should be in accordance with the closely analogous civil commitment procedures provided for suspected mentally disordered sex offenders and narcotics addicts, who are entitled to a jury trial and a three-fourths verdict.

(3) Constitutional Law § 156(7)--Equal Protection of Laws--Arbitrary and Unreasonable Classification.
The concept of the equal protection *298 of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment, and, though neither the state nor the federal Constitution precludes classification by the Legislature or requires uniform operation of the law with respect to persons who are different, the state may not arbitrarily accord privileges to or impose disabilities upon a class unless there exists some rational distinction between those included in and those excluded from the class.

(4) Constitutional Law § 156(1)--Equal Protection of Laws--Reasonableness of Classification.
Although normally any rational connection between distinctions drawn by a statute and the legitimate purpose thereof will suffice to uphold the statute's constitutionality, closer scrutiny is afforded a statute which affects fundamental interests or employs a suspect classification, and in such cases the state bears the burden of establishing both that the state has a compelling interest which justifies the law and that the distinction is necessary to further that purpose.

(5) Delinquent, Dependent, and Neglected Children § 31(4)--Youth Correction--Commitment to Youth Authority--Ward's Right to Discovery.
In a proceeding to confine a Youth Authority ward for treatment pursuant to Welf. & Inst. Code, §§ 1800-1803, for a period beyond the date on which his release would otherwise have been mandatory, the trial court did not abuse its discretion in denying the ward's motions to discover the names of all persons who had examined or diagnosed him, together with all notes, memoranda, and reports prepared by such persons, and to subpoena the chairman of the Youth Authority and discover various matters relating to the Youth Authority Board's procedure in deciding to initiate the proceeding, where the petition itself was accompanied by the statement of facts on which the board based its opinion that the ward's discharge would be physically dangerous to the public, and several evaluation reports were attached thereto, where the court issued a subpoena for the physician who bore primary responsibility for the ward's evaluation, who brought with him to the hearing the state hospital's file, where a physician was appointed to examine the ward on behalf of the defense, and was given access to the file, and where the court further offered to subpoena other witnesses who might have relevant evidence as revealed by the evaluating physician's testimony. *299

COUNSEL

Richard S. Buckley, Public Defender, Laurance S. Smith, Kathryn J. McDonald and James L. McCormick, Deputy Public Defenders, for Defendant and Appellant.

Thomas C. Lynch and Evelle J. Younger, Attorneys General, William E. James, Assistant Attorney General, and Blanche C. Bersch, Deputy Attorney General, for Plaintiff and Respondent.

WRIGHT, C. J.

In this case we are called upon to determine whether the procedures by which the California Youth Authority is empowered to extend its control over a ward beyond his normal release date are constitutional.

We have concluded that confinement pursuant to Welfare and Institutions Code sections 1800-1803 [FN1] does not violate the Eighth Amendment's proscription of cruel and unusual punishment, but that persons who are subjected to proceedings initiated thereunder are entitled, upon request, to a jury trial.

FN1 Unless otherwise indicated, all references are to the Welfare and Institutions Code.

Gary W., who was a minor ward of the California Youth Authority at the time this proceeding commenced, appeals from an order of the juvenile court directing his continued detention by the Youth Authority for treatment. He contends that the statutory scheme of sections 1800-1803 and the judicial procedures by which those sections are implemented permit imprisonment for status and deny due process and equal protection in violation of

the Eighth and Fourteenth Amendments to the United States Constitution and article I, sections 6, 11, 13 and 21, of the California Constitution. He complains in particular of the denial of the right to trial by jury. In addition, appellant contends that the order appealed from is not supported by substantial evidence and that he was erroneously denied the right to pretrial discovery and to subpoena out-of-county witnesses.

The contentions of the parties and our analysis are better understood if, before reciting the factual background of the case, we summarize the scope and impact of the statutory scheme under review. Sections 1800-1803 apply only to wards of the California Youth Authority, i.e., to minors committed to the Youth Authority by the juvenile court pursuant to the "300" authority of sections 730, 731, and 777, and to young adults committed by the superior court pursuant to sections 1730-1731.5. Under the procedures here reviewed the California Youth Authority may petition the court which initially committed the ward to the Youth Authority for an order directing the Youth Authority to retain control over the ward beyond the date upon which his release would otherwise be mandatory. The court may order the ward detained for treatment, for a period of up to two years if he was committed by the juvenile court or five years if he was committed after conviction of a criminal offense, if the ward is found to be physically dangerous to the public because of mental or physical deficiency, disorder, or abnormality. The proceedings apply only to the detention of adults, including persons who have committed no criminal offense. The theoretical maximum period of detention is life as successive petitions may be filed at biennial intervals. Finally, the Youth Authority may place the ward in a facility of the Department of Corrections if, because of age or other factors, he is deemed unsuitable for treatment in a facility of the Youth Authority.

On November 8, 1967, the juvenile court committed Gary to the Youth Authority after finding that he had molested a child and was thus a person described by section 602. [FN2] He was then 19 years old. His discharge was mandatory, under section 1769, [FN3] at the end of two years or on his twenty-first birthday, whichever was later, [FN4] unless an order for further detention had then been made pursuant to section 1800. [FN5] Gary became 21 on August *301 10, 1969. The Youth Authority filed a petition under section 1800 on August 11, 1969, alleging that Gary was "a person who would be physically dangerous to the public due to his mental or physical deficiency, disorder, or abnormality ...," and requesting an extension of control over him for a period of two years, to and including his twenty-third birthday. After a hearing at which both the Youth Authority and Gary presented evidence on the issue of his "dangerousness," the juvenile court found the allegations of the petition to be true, and, on October 27, 1969, ordered that Gary remain subject to the control of the California Youth Authority through his twenty-third birthday. He appeals from that order.

FN2 Section 602: "Any person under the age of 21 years who violates any law of this State or of the United States or any ordinance of any city or county of this State defining crime or who, after having been found by the juvenile court to be a person described by Section 601, fails to obey any lawful order of the juvenile court, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court."

FN3 Section 1769: "Every person committed to the authority by a juvenile court shall be discharged upon the expiration of a two-year period of control or when the person reaches his 21st birthday, whichever occurs later, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800)."

FN4 Although the original commitment order recited that Gary should be confined "until the expiration of a two year period of control, or until said ward is 21 years of age, to wit: until August 10, 1969 ...," we find no significance in the omission of the qualification "whichever occurs later." The juvenile court was without power to order commitment for any period other than the statutory term. Thus, any ambiguity in the order must be resolved in favor of a reading of the order that is consistent with the statute and the court's obvious intent to impose the statutory term as reflected in the oral pronouncement of commitment for the time prescribed by section 1769.

FN5 Section 1800: "Whenever the Youth Authority Board determines that the discharge of a person from the control of the Youth Authority at the time required by Section 1769, 1770, 1770.1, or 1771, as applicable, would be physically dangerous to the public because of the person's mental or physical

> deficiency, disorder, or abnormality, the board, through its chairman, shall make application to the committing court for an order directing that the person remain subject to the control of the authority beyond such time. The application shall be filed at least 90 days before the time of discharge otherwise required. The application shall be accompanied by a written statement of the facts upon which the board bases its opinion that discharge from control of the Youth Authority at the time stated would be physically dangerous to the public, but no such application shall be dismissed nor shall an order be denied merely because of technical defects in the application."

I

Punishment for Status

(1)Preliminarily we dispose of appellant's contention that he is being punished for his alleged status of "dangerousness" in violation of the Eighth Amendment to the United States Constitution and article I, section 6, of the California Constitution (Robinson v. California (1962) 370 U.S. 660 [8 L.Ed.2d 758, 82 S.Ct. 1417]).

Respondent concedes that if Gary were to be imprisoned as a criminal under these procedures his detention would be unconstitutional under Robinson as cruel and unusual punishment. (In re De La O (1963) 59 Cal.2d 128, 136 [28 Cal.Rptr. 489, 378 P.2d 793, 98 A.L.R.2d 705].) Implicit in this concession is an admission that continued confinement pursuant to section 1800 is predicated on status. As in De La O, therefore, "The issue is whether the statutory scheme here challenged (a) 'imprisons' petitioner 'as a criminal,' or (b) constitutes 'compulsory treatment' of petitioner as a sick person requiring periods of involuntary confinement." (59 Cal.2d at p. 136.) The question is easily resolved, for the Legislature has been at pains to assure that confinement pursuant to sections 1800-1803 shall be only for the purpose of treatment. Thus, we need not decide whether confinement under these sections, with the potential for confinement in a state prison, would be constitutionally permissible solely for the purpose of protecting society.

Section 1800 provides in pertinent part: "Whenever the Youth Authority *302 Board determines that the discharge of a person from the control of the Youth Authority at the time required by Section 1769 ... would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality, the board ... shall make application to the committing court for an order directing that the person remain subject to the control of the authority beyond such time." Potential danger to the public is thus made the criterion upon which jurisdiction to order continued control rests. But the Legislature has also specified that if the court finds that discharge of the ward would be physically dangerous, "the court shall order the Youth Authority to continue the treatment of such person." (§ 1801.) Thus, as to any person committed to its control pursuant to sections 1800-1803, the Youth Authority is under an affirmative duty to provide treatment for the underlying cause of the ward's dangerousness. If the cause is not a physical or mental condition or the condition is not amenable to treatment, the Youth Authority may not extend its control over the ward pursuant to sections 1800-1803. [FN6]

> FN6 It should be emphasized that we do not suggest that a person who is physically dangerous to society must be set free. The Youth Authority has available to it a variety of alternatives to continued control under sections 1800-1803. See, e.g., section 1780 (commitment of dangerous ward to state prison if period of control not equal to maximum term for offense of which he was convicted); section 5000 et seq. (detention and certification for involuntary treatment of imminently dangerous persons); and section 6300 (commitment of mentally disordered sex offenders).

In view of the demonstrably civil purpose of sections 1800-1803, and in the absence of any evidence that persons committed thereunder are incarcerated in penal institutions among the general prison population, or are customarily detained without treatment, we conclude that the statutory scheme of sections 1800-1803 and the confinement of Youth Authority wards thereunder does not constitute cruel and unusual punishment within the meaning of Robinson v. California, supra, 370 U.S. 660.

Appellant also contends, however, that he was not given treatment while confined under the original commitment. Indeed, he elicited testimony from respondent's expert, Dr. Alfred Owre, the chief medical officer of the Atascadero State Hospital, where he had been confined for observation, that "he had been kept on ice in the Youth Authority and

he hasn't received any significant psychiatric treatment there, either." The evidence of lack of treatment was sufficiently disturbing to the juvenile court judge that in ordering Gary's continued detention he declared his intention to communicate to the Youth Authority his conclusion that it had been derelict in its responsibility to Gary.

The failure of the Youth Authority to provide treatment to a particular ward committed to it under statutory provisions other than those here *303 under review is not a basis for invalidation of sections 1800-1803. As we have noted, the Youth Authority is under an affirmative obligation to provide treatment for the ward's mental or physical abnormality when he is committed pursuant to those sections. Detention of such wards without treatment is unauthorized by statute. Accordingly, any person confined pursuant to a section 1800 commitment, but who is not receiving treatment may seek his release through appropriate habeas corpus procedures. (Pen. Code, § 1473; cf. People v. Succop (1966) 65 Cal.2d 483, 488-489 [55 Cal.Rptr. 397, 421 P.2d 405]; In re De La O, supra., 59 Cal.2d 128, 156.)

II

Due Process and Equal Protection

(2a)Appellant next contends that due process and equal protection preclude his commitment to a period of involuntary confinement unless he is afforded a right to trial by jury. He argues that the procedure leading to detention under section 1800, applying as it does only to persons under jurisdiction of the Youth Authority, irrationally and unreasonably discriminates between youthful persons dangerous because of physical or mental abnormality and other persons similarly dangerous but not within the jurisdiction of the Youth Authority. He contends that because no rational distinction can be drawn between dangerous Youth Authority wards and other dangerous persons, he is entitled to all of the rights accorded such other persons in statutory commitment proceedings such as those applicable to mentally disordered sex offenders (§ 6318), to imminently dangerous persons (§§ 5302-5303), and to narcotics addicts (§§ 3050, 3051 and 3108).

(3)Appellant recognizes that neither the Fourteenth Amendment of the Constitution of the United States nor the California Constitution (art. I, § § 11, 21; art. IV, § 16) precludes classification by the Legislature or requires uniform operation of the law with respect to persons who are different. The state may not, however, arbitrarily accord privileges to or impose disabilities upon one class unless some rational distinction between those included in and those excluded from the class exists. "The concept of the equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment." (Purdy & Fitzpatrick v. State of California (1969) 71 Cal.2d 566, 578 [79 Cal.Rptr. 77, 456 P.2d 645]. See also F. S. Royster Guano Co. v. Virginia (1920) 253 U.S. 412, 415 [64 L.Ed. 989, 40 S.Ct. 560]; Developments in the Law- Equal Protection (1969) *304 82 Harv.L.Rev. 1065, 1076; Tussman and tenBroek, The Equal Protection of the Laws (1949) 37 Cal.L.Rev. 341, 346.)

(2b)The commitment and detention for treatment of a physically dangerous Youth Authority ward does not of itself deny equal protection. As appellant acknowledges, the Legislature has enacted a unified framework of laws providing for the involuntary commitment of persons who present a danger to society. It is not unreasonable that the Legislature should devise several means by which to detect and isolate persons who may present a danger to society. [FN7] It is particularly appropriate that a prior contact with the system of criminal justice should be an event which may give rise to such an inquiry inasmuch as the antisocial act which brought the defendant before the court may be symptomatic of a condition which instills a propensity to commit such acts. The legislative decision to provide for the continuation of treatment of Youth Authority wards who have reached their majority under Youth Authority control, rather than transferring their treatment to the Department of Mental Hygiene or another agency of the state is neither unreasonable nor arbitrary. (Cf. In re De La O, supra., 59 Cal.2d 128, 138-139; In re Cavanaugh (1965) 234 Cal.App.2d 316, 321-322 [44 Cal.Rptr. 422].)

FN7 For example, proceedings under the Lanterman-Petris-Short Act with respect to mentally ill or chronically alcoholic persons may be initiated by the district attorney, a peace officer, a member of the attending staff of an evaluation facility, or by an individual. (§§ 5114, 5150, 5201.) In the case of suspected narcotics addicts or mentally disordered sex offenders, the courts in

which such persons have been convicted of a crime may order commencement of involuntary commitment proceedings. (§§ 3050, 3051, 6302.)

However, although the procedures leading to the commitment of various classes of people for treatment or to protect society from them need not be identical in all respects, none may deny to one such class fundamental rights or privileges accorded to another unless a rational basis for the distinction exists. Thus we must evaluate the procedures adopted to implement sections 1800-1803 in light of other statutory provisions governing involuntary commitment. (Cf. Baxstrom v. Herold (1966) 383 U.S. 107 [15 L.Ed.2d 620, 86 S.Ct. 760].)

Chief among these is the Lanterman-Petris-Short Act and related legislation (Stats. 1967, ch. 1667, § § 5000-5401, 6250-6825) the provisions of which encompass the involuntary commitment of persons who because of mental illness are imminently dangerous, inebriates, mentally disordered sex offenders, gravely disabled persons, persons who are suicidal, and the mentally retarded. In addition we must consider the procedures by which persons may be committed for treatment of actual or potential narcotics addiction pursuant to section 3050 et seq. *305

Appellant contends that persons in these categories are generally accorded greater protection against unjust or unnecessary confinement than are Youth Authority wards subject to section 1800 and that the majority are entitled to a jury determination that they are within the class subject to commitment. Our examination of the relevant statutes confirms this assertion. In every case except that of mentally retarded persons the person subject to commitment is entitled to a jury trial before he may be detained for reasons other than brief observation or emergency care. No person may be involuntarily committed as an imminently dangerous mentally ill person for longer than 17 days of treatment (§§ 5150, 5250: 72 hours initial observation plus 14 days of intensive treatment) without a hearing at which he is entitled upon demand to a unanimous jury determination that the facts necessary to support the commitment have been proven. (§ 5303.) A person found to be a mentally disordered sex offender and ordered committed pursuant to section 6316 may demand a jury trial on the question of whether he is a mentally disordered sex offender (§ 6318) and is entitled to be discharged unless he is found to be so by three-fourths of the jury. (§ 6321.) No person held for treatment as an inebriate may be detained for longer than 72 hours of treatment unless he could also have been detained as an imminently dangerous or gravely disabled person, in which case further detention must be pursuant to the provisions governing those classes of persons. (§ 5230.) An alleged gravely disabled person is entitled to a jury trial on the issue of whether he is gravely disabled. (§ 5350, subd. (d).)

Similarly, the alleged narcotics addict, whether or not he has been convicted of a crime, is entitled upon demand to a jury trial and a three-fourths verdict on the question of his addiction before he may be involuntarily committed. (§§ 3050, 3051, 3108.) Apart from those statutory provisions dealing with the mentally retarded and Youth Authority wards, there is no authority for the involuntary commitment of adults without a jury trial if requested.

Respondent does not challenge this analysis, but asserts that the instant proceedings are a continuation of juvenile proceedings, as to which no right to jury trial exists, and that they are not criminal proceedings. Neither factor is dispositive. As has been shown, the commitment proceeding here applies only to adults. It is in no way a juvenile proceeding, nor is it an extension of a prior juvenile court proceeding. The question before the court in juvenile proceedings under sections 601 and 602 is whether the juvenile is a person described by those sections, i.e., is he a minor who refuses to obey reasonable orders "of his parents, guardian, custodian or school authorities, or who is beyond the control of such person, or [a] person who is a habitual truant ... or who ... is in danger of leading *306 an idle, dissolute, lewd, or immoral life " (§ 601) or has he violated any law or, if found to be a person described in section 601, has he failed to obey a lawful order of the juvenile court. (§ 602.) The question before the court in a section 1800 proceeding is whether an adult is physically dangerous to the public because of physical or mental abnormality. We perceive no logical basis upon which to characterize a section 1800 proceeding as a juvenile proceeding or an extension thereof. Were it not for the statutory command that the section 1800 petition be filed in the "committing court," which in many instances was the juvenile

court, it would be entirely appropriate for all such proceedings to be held in the superior court.

Denial of the right to a jury trial to a person subject to commitment pursuant to section 1800 cannot, therefore, be predicated upon any rational distinction which may be drawn between juveniles and other members of the public.

The necessity for a rational distinction among persons whom the law treats differently is of particular importance in the area of involuntary commitment. (4)Although normally any rational connection between distinctions drawn by a statute and the legitimate purpose thereof will suffice to uphold the statute's constitutionality (Purdy & Fitzpatrick v. State of California, supra, 71 Cal.2d 566, 578), closer scrutiny is afforded a statute which affects fundamental interests or employs a suspect classification. (In re Antazo (1970) 3 Cal.3d 100, 110-111 [89 Cal.Rptr. 255, 473 P.2d 999]; Purdy & Fitzpatrick v. State of California, supra, 71 Cal.2d at pp. 578-579.) In such cases the state bears the burden of establishing both that the state has a compelling interest which justifies the law and that the distinction is necessary to further that purpose. (In re Antazo, supra., 3 Cal.3d 100, 111; Castro v. State of California (1970) 2 Cal.3d 223, 234-236 [85 Cal.Rptr. 20, 466 P.2d 244].)

A variety of interests have been held to be so "fundamental" as to impose this burden on the state. Voting (Castro v. State of California, supra., 2 Cal.3d 223), procreation (Skinner v. Oklahoma (1942) 316 U.S. 535 [86 L.Ed. 1655, 62 S.Ct. 1110]), interstate travel (Shapiro v. Thompson (1969) 394 U.S. 618 [22 L.Ed.2d 600, 89 S.Ct. 1322]), and education (Brown v. Board of Education (1954) 347 U.S. 483 [98 L.Ed. 873, 74 S.Ct. 686, 38 A.L.R.2d 1180]) have all been characterized as fundamental for this purpose. The right to a jury trial in an action which may lead to the involuntary confinement of the defendant, even if such confinement is for the purpose of treatment, is no less fundamental. Its fundamental nature is reflected by the absolute right to jury trial accorded by the Sixth and Seventh Amendments to the United States Constitution *307 and by article I, section 7 of the California Constitution in all criminal trials and in those civil actions in which such a right was available at common law. Its fundamental nature was further emphasized by the United States Supreme Court in Duncan v. Louisiana (1968) 391 U.S. 145 [20 L.Ed.2d 491, 88 S.Ct. 1444], where the court held that due process requires that the right to jury trial be extended to defendants in state criminal prosecutions of a serious nature. Although Duncan involved a criminal prosecution, the court found the right to jury trial was required by the dictate of the Fourteenth Amendment that no state "deprive any person of life, liberty or property, without due process of law." The court recognized that "A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government" and that "the jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power-a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges." (391 U.S. at pp. 155-156.) To the person who is threatened with involuntary confinement, these considerations are equally important whether the threat of confinement originates in a civil action or a criminal prosecution.

(2c)In extending the right to trial by jury to other classes of persons subject to civil commitment proceedings, the California Legislature has recognized that the interests involved in civil commitment proceedings are no less fundamental than those in criminal proceedings and that liberty is no less precious because forfeited in a civil proceeding than when taken as a consequence of a criminal conviction. We conclude that in the absence of a compelling state purpose for the distinction between the class of persons subject to commitment pursuant to section 1800 and to other classes of persons subject to involuntary confinement, the right to jury trial is a requirement of both due process of law and equal protection of the law.

Our conclusion finds support in the decision of the United States Supreme Court in Baxstrom v. Herold, supra., 383 U.S. 107. There a New York state prisoner who had been transferred to a hospital for mentally ill prisoners was the subject of a petition for civil commitment shortly before the expiration of his term. In accord with a commitment procedure applicable only to prisoners, a judicial hearing was held at which the court found that the prisoner might be in need of care in an institution for the mentally ill. The state's Department of Mental Hygiene refused to accept him, however, upon an ex parte determination that he was not suitable for care in a civil hospital. He was therefore retained in the hospital operated by the New York

Department of Correction. The Supreme Court held: "[P]etitioner was denied equal protection of the laws by the statutory *308 procedure under which a person may be civilly committed at the expiration of his penal sentence without the jury review available to all other persons civilly committed in New York. Petitioner was further denied equal protection of the laws by his civil commitment to an institution maintained by the Department of Correction beyond the expiration of his prison term without a judicial determination that he is dangerously mentally ill such as that afforded to all so committed except those ... nearing the expiration of a penal sentence." (383 U.S. at p. 110 [15 L.Ed.2d at p. 623].) After noting that the state had made jury review of the sanity issue available to all others subject to civil commitment, the court concluded: "It follows that the State, having made this substantial review proceeding generally available on this issue, may not, consistent with the Equal Protection Clause of the Fourteenth Amendment, arbitrarily withhold it from some.... [T]here is no conceivable basis for distinguishing the commitment of a person who is nearing the end of a penal term from all other commitments." (Id. at pp. 111-112 [15 L.Ed.2d at pp. 623-624].)

Respondent argues that the California system is distinguishable because of its complexity and the fact that commitment proceedings differ among the classes subject to them. Respondent also suggests that the classification is reasonable because mentally retarded persons also are not entitled to a jury trial. It is apparent that these contentions must fail. The complexity of the various commitment statutes does not obscure the effect of denial of the right to jury trial. We consider here a fundamental right, not minor procedural differences among the various commitment procedures. The state does not meet its burden of demonstrating a compelling interest in denying the right to jury trial to Youth Authority wards by claiming that other distinctions exist among these procedures or by pointing out that alleged mentally retarded persons are similarly discriminated against. The state having made jury trial on the issue of status a prerequisite to commitment "generally available ... may not, consistent with the Equal Protection Clause of the Fourteenth Amendment, arbitrarily withhold it from some." (Baxstrom v. Herold, supra, 383 U.S. 107, 111 [15 L.Ed.2d 620, 623].)

Appellant is entitled to a new hearing on the question of whether he is, because of mental or physical deficiency, disorder, or abnormality, physically dangerous to the public. We deem the commitment of Youth Authority wards under section 1800 to be most closely analogous to the civil commitment procedures for suspected mentally disordered sex offenders and narcotics addicts, each of which classes are entitled to a jury trial and a three-fourths verdict. Appellant is entitled to a jury trial in like manner as is made available to those classes. *309

III

Discovery and Subpoena Rights

In view of our conclusion that the case must be returned to the juvenile court for a new hearing, it is not necessary to consider appellant's contention that the evidence was insufficient to support the court's finding that he was subject to commitment under sections 1800-1803. We deem it advisable, however, for the guidance of the court on rehearing, to comment on the extent of discovery and subpoena rights available to a defendant in a section 1800 proceeding.

The statute is silent as to the Youth Authority ward's right to discovery in a section 1800 commitment proceeding. The issue has not arisen in the decided cases involving either Youth Authority wards or other persons subject to commitment. We have, however, recently considered the discovery rights available in juvenile proceedings. In Joe Z. v. Superior Court (1970) 3 Cal.3d 797 [91 Cal.Rptr. 594, 478 P.2d 26], we held that despite traditional references to juvenile proceedings as "civil" or "essentially civil" in nature, the juvenile court "should have the same degree of discretion as a court in an ordinary criminal case to permit, upon a proper showing, discovery between the parties." (3 Cal.3d at p. 801. See also, In re Dennis M. (1969) 70 Cal.2d 444, 462 [75 Cal.Rptr. 1, 450 P.2d 296].) Our determination that the civil discovery statutes were inapplicable to juvenile proceedings was based in part on the quasi-criminal nature of such proceedings "involving ... the possibility of a substantial loss of personal freedom." We also noted, however, that a "need for expeditious and informal adjudications ... belies the wisdom or necessity of any indiscriminate application of civil discovery procedures." (3 Cal.3d at p. 801.)

The same considerations are present in other

commitment proceedings the possibility of a substantial loss of personal freedom and the need for expeditious adjudication. Thus, although section 1800 proceedings are not juvenile proceedings, and are not criminal, the same discovery rights should be available to adults subject to commitment as are extended to juveniles and to defendants in criminal prosecutions. In adult commitment proceedings, however, the court also has discretion to authorize, upon a showing of relevance and necessity, any of the discovery tools available in a civil action.

Commitment proceedings are "special proceedings of a civil nature." (People v. Succop, supra, 65 Cal.2d 483, 486 [mentally disordered sex offenders]; In re De La O, supra., 59 Cal.2d 128, 156 [narcotics addicts].) The Legislature has provided that the right to civil discovery shall be *310 accorded in special proceedings in situations where "it is necessary to do so." (Code Civ. Proc., § 2035.) Thus the court is vested with wide discretion to determine whether the complexity of the issues is such that discovery is necessary to the fact finding process or to the expedition of the hearing. We see no necessity to accord full discovery rights afforded in civil actions to all defendants in commitment proceedings. In such proceedings a single issue is to be resolved, i.e., is the defendant a person described by the statute authorizing his commitment. The narrow issue and the need for expeditious adjudication suggest that it is not unreasonable to require a showing of relevance and necessity as a prerequisite to a discovery order.

It is also reasonable to require that the same showing be made a prerequisite to issuance of an out-of-county subpoena in a section 1800 proceeding. Section 1801 provides that the court "shall afford ... an opportunity to appear in court with the aid of counsel and of process to compel attendance of witnesses and production of evidence." The requirement that a showing of relevance and necessity be made is found in the statutes governing issuance of subpoenas in mentally disordered sex offender proceedings. (§ 6313.) In proceedings for the commitment of imminently dangerous mentally ill persons a similar requirement exists. (§ 5303; Cal. Const., art. I, § 13.) In such proceedings the defendant has the same right to compel the attendance of witnesses as does a defendant in a criminal proceeding. As to out-of-county witnesses in criminal and juvenile proceedings, the Penal Code provides: "No person is obligated to attend ... unless the distance be less than 150 miles from his place of residence to the place of trial, or unless the judge, upon an affidavit ... of the defendant, or his counsel ... stating that he believes the evidence of the witness is material, and his attendance at the examination, trial, or hearing is material and necessary, shall endorse on the subpoena an order for the attendance of the witness." (Pen. Code, § 1330.) The court may properly quash subpoenas directed to local witnesses, as to whom the defendant need make no such showing (Pen. Code, § 1326) if the defendant fails to show that the person could offer relevant testimony. (In re Finn (1960) 54 Cal.2d 807, 813 [8 Cal.Rptr. 741, 356 P.2d 685].) It follows that where a showing of relevance and necessity is prerequisite to issuance of the subpoena the court may refuse to endorse the subpoena if it deems the showing to be inadequate.

(5)Appellant contends that without knowledge of all reports and records made during his Youth Authority confinement, it was not possible to controvert the allegations of the petition that he was dangerous. He complains that without access to such records he could not ascertain the reason the Youth Authority Board thought he was dangerous. *311

In an effort to discover the basis for the petition, appellant sought by motion to discover the identity, professional status, and mailing addresses of all persons who examined or diagnosed him, together with written notes, memoranda, and reports prepared by such persons, and, in particular, to discover the content of four reports which were prepared at the Atascadero State Hospital during a 90-day period of observation that preceded the filing of the petition. In addition, he sought to subpoena the chairman of the Youth Authority, to discover the names of the Youth Authority Board members present at the meeting at which it was decided to petition for his continued detention, the number of board members constituting a quorum, and all transcripts, minutes, notes, and other records of the meeting. Both motions were denied.

The petition itself was accompanied by a statement of the facts upon which the board based its opinion that discharge of appellant would be physically dangerous to the public. The petition described generally his contacts with the courts prior to his

incarceration, the facts surrounding the present commitment, and briefly outlined the history of his confinement. The allegation that Gary met the standard for continued detention under section 1800 was couched in conclusionary language, but several evaluative reports prepared by staff members of the Youth Authority and of Atascadero State Hospital were attached to the petition.

It is apparent that appellant's discovery requests were far too broad. The court could properly assume that the Youth Authority Board members who voted to petition for continued control of appellant had no personal knowledge of appellant and that their decision was based on the files of the Youth Authority and on the recommendations of various professional personnel who came in contact with him during his commitment to the Youth Authority. Furthermore, the basis of their decision to petition for continued control over Gary is essentially irrelevant to the issue to be decided at the hearing on the petition. It is not why the Board decided to petition, but what evidence the Youth Authority intends to introduce in support of its petition, that is relevant to preparing a defense to the charge. Inasmuch as the question of whether a defendant is physically dangerous because of physical or mental abnormality can be anticipated to be a medical, psychiatric, or psychological judgment, discovery of matters going beyond the basis of the anticipated expert testimony is unnecessary.

The court properly resolved appellant's discovery requests by issuing a subpoena for Dr. Owre, the physician who bore primary responsibility for evaluation of appellant at Atascadero, and who became the primary witness on behalf of the Youth Authority. Dr. Owre brought with him *312 to the hearing the hospital's file which the court ordered copied for the record. In addition, the court appointed a physician to examine appellant on behalf of the defense, who was given access to the reports of Dr. Owre, including reports of the tests administered at Atascadero. He also reviewed charts from both Atascadero and the Youth Authority. Finally, the court offered to subpoena other witnesses who might have relevant evidence as revealed by Dr. Owre's testimony, and stated that if Dr. Owre appeared to be shielding the identity of any such witness Dr. Owre's testimony would be stricken.

Appellant does not contend that he sought to compel the attendance of any such persons after Dr. Owre's testimony was received. In the absence of any such request and of any showing of prejudice as revealed by an examination of Dr. Owre's testimony, it cannot be said that the trial court abused its discretion in refusing to issue the additional subpoena and to permit the requested discovery.

The order appealed from is vacated and the matter is remanded to the juvenile court for proceedings not inconsistent with this opinion.

McComb, J., Peters, J., Tobriner, J., Mosk, J., Burke, J., and Sullivan, J., concurred. *313

Cal.,1971.

In re W.

END OF DOCUMENT

234 Cal.App.2d 316
44 Cal.Rptr. 422
(Cite as: 234 Cal.App.2d 316)

In re EARLE STANLEY CAVANAUGH, a Person coming under the Juvenile Court Law.
THE PEOPLE, Plaintiff and Respondent,
v.
EARLE STANLEY CAVANAUGH, Defendant and Appellant.

Civ. No. 22056.

District Court of Appeal, First District, Division 3, California.

May 12, 1965.

HEADNOTES

(1a, 1b) Delinquent Children § 31(4)--Youth Correction--Commitment-- Extending Term of Control.
Welf. & Inst. Code, § 1800, requiring that a petition to extend control over one committed to the Youth Authority be filed at least 90 days before the discharge date, vests jurisdiction in the committing court to hear and determine petitions filed thereunder.

See Cal.Jur.2d, Delinquent, Dependent, and Neglected Children, § 23.

(2) Delinquent Children § 31(4)--Youth Correction--Commitment--Extending Term of Control.
Proceedings to extend the term of control over one committed to the Youth Authority are civil in nature and designed to serve the spiritual, emotional, mental and physical welfare of the minor and the best interests of the state. (Welf. & Inst. Code, § 502.)

(3) Delinquent Children § 31(4)--Youth Correction--Commitment--Extending Term of Control.
Though a petition to extend the term of control over one committed to the Youth Authority was not filed within the 90 days specified in Welf. & Inst. Code, § 1800, this error did not deprive the court of jurisdiction; the statute does not purport to restrict the court's power to act where the petition is not timely filed, nor is any penalty attached for noncompliance.

(4) Delinquent Children § 31(4)--Youth Correction--Commitment--Extending Term of Control.
One over whom the Youth Authority's control was extended beyond his 21st birthday was not prejudiced by failure to file the petition for extension of control 90 days before his discharge date, where it appeared that the court appointed counsel who properly represented the youth, that adequate time was allowed to prepare opposition to the petition, that the hearing took place five weeks after filing the petition, and that the hearing was full, complete and fair in all respects.

(5) Delinquent Children § 31(4)--Youth Correction--Commitment--Extending Term of Control.
Notice to a parent, served by mail in the manner prescribed by Code Civ. Proc., § 1013, of a hearing to extend the term of control by the Youth Authority over a youth previously *317 committed, is presumed received; absent sufficient evidence to overcome the presumption, the certificate of service by mail suffices to establish service. (Code Civ. Proc., § 1963, subd. 24.)

(6) Delinquent Children § 31(4)--Youth Correction--Commitment--Extending Term of Control.
In a proceeding to extend the Youth Authority's control over a youth previously committed, though notice of the hearing was not given to his father, the court's order extending the term of control was not invalidated, where it appeared that the youth was represented by counsel, that no objection was raised by the youth or his counsel, that witnesses produced by the People were cross-examined by the youth, that he produced one witness, and that his counsel argued the issues at length; under the circumstances, the youth waived any right to object to the failure to serve notice of the hearing on his father.

(7) Delinquent Children § 31(4)--Youth Correction--Commitment--Extending Term of Control.
The record of a hearing to extend the term of control by the Youth Authority over one previously committed did not support a claim of bias by the trial judge where it appeared that the judge asked questions principally related to the adequacy of the Youth Authority facilities to care for and treat the

youth offender and that there was no claim of bias or prejudice made at the hearing.

(8) Judges § 54--Disqualification--Time of Raising Objection.
Generally, the issue of the bias and prejudice of a trial judge must be raised when the facts first become known or at least before the matter is submitted for decision because a party should not be allowed to gamble on a favorable decision and then object if disappointed in the result.

(9) Constitutional Law § 147--Uniformity of Operation--Exempting Particular Cases.
The Legislature may recognize degrees of harm and may confine its restrictions to those classes of cases where the need is deemed to be clearest.

(10) Constitutional Law § 150--Classification.
The power of the Legislature to classify is broad and its exercise involves a wide discretion.

(11) Delinquent Children § 31(3)--Youth Correction--Validity of Statute.
By Welf. & Inst. Code, § § 1800-1803, the Legislature has determined that society needs protection from young persons committed to the Youth Authority where, at the time of their release, they are physically dangerous to the public because of mental or physical deficiency, disorder, or abnormality; such classification is neither arbitrary nor unreasonable.

(12) Delinquent Children § 31(4)--Youth Correction--Commitment--Extending Term of Control.
In Welf. & Inst. Code, § 1800, concerning extension of the term of control by the Youth Authority over one with a "mental or physical deficiency" or one "physically dangerous," such phrases are subject to reasonable definitions, may be *318 readily applied, and do not make the statute unconstitutionally vague.

SUMMARY

APPEAL from a judgment of the Superior Court of Sonoma County extending term of control over a youth committed to the Youth Authority. Hilliard Comstock, Judge. Affirmed.

COUNSEL

Winfield W. Foster, under appointment by the District Court of Appeal, for Defendant and Appellant.

Thomas C. Lynch, Attorney General, Albert W. Harris, Jr., and Derald E. Granberg, Deputy Attorneys General, for Plaintiff and Respondent.

SALSMAN, J.

This is an appeal from a judgment entered pursuant to sections 1800 through 1803 of the Welfare and Institutions Code, [FN1] extending the control of the Youth Authority over appellant for a period of two years beyond his 21st birthday. [FN2]

FN1 All section references are to the Welfare and Institutions Code, unless otherwise noted.

FN2 In summary these sections authorize the committing court, on application of the Youth Authority, to order continued detention of one previously committed, upon a showing that discharge of such person would be "physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality..." Notice to the subject, or to his parent or guardian if he is a minor, is required. At the hearing upon the application the person whose liberty is involved is entitled to be represented by counsel; and to appeal from the court's order.

Appellant was committed to the Youth Authority in 1957 when he was 14 years of age. He was given a psychiatric examination upon his admission. The examining physician concluded that he was then a dangerous person and "able to kill someone." Later examinations by various psychiatrists confirmed this evaluation. From the time of his reception by the Youth Authority until December 1963 when the order herein appealed from was made, appellant was transferred from the Reception Center at Perkins to the Fred C. Nelles School for Boys, to the Preston School of Industry, and finally to the Deuel Vocational Institute at Tracy. During his detention he was paroled three times, and each time his parole was revoked because of failure to adjust in society.

Control of the Youth Authority over appellant would ordinarily have ceased upon appellant's 21st birthday, but as that date approached it appeared that appellant was not prepared to make any successful adjustment outside of some correctional *319

facility. The Youth Authority Board therefore resolved to seek continued detention of appellant under authority of the cited statutes.

At the hearing on respondent's petition there was evidence, including testimony from a psychiatrist, to the general effect that appellant was then mentally unstable, and that his release would be physically dangerous to the public. Other witnesses testified, and documentary evidence was received. At the conclusion of the hearing the court made its order extending the control of the Youth Authority over appellant for two years beyond his 21st birthday.

Appellant first contends that the court had no jurisdiction to issue its order for his continued detention because respondent did not comply with procedural requirements concerning the filing of the petition. (1a) Section 1800 requires that the petition be filed at least 90 days before the subject's date of discharge. Here the petition was filed less than 60 days before appellant's scheduled date of release. Appellant argues that this failure to comply with the 90-day requirement of section 1800 divested the court of jurisdiction. He urges that the 90-day period established by the statute operates in the same fashion as a statute of limitations in criminal cases, where the running of the statute against a charged offense operates to deprive the court of jurisdiction. (See Witkin, Cal. Criminal Procedure (1963) § 204, pp. 191-192, and cases cited.) This is not correct. Appellant was originally committed to the Youth Authority by the juvenile court. (2) All proceedings leading up to the order here challenged took place in that court. Such proceedings are civil in nature, designed to "serve the spiritual, emotional, mental and physical welfare of the minor and the best interests of the State; ..." (§ 502; see In re Johnson, 227 Cal.App.2d 37, 39 [38 Cal.Rptr. 405].) (1b) Section 1800 vests jurisdiction in the committing court to hear and determine petitions filed thereunder. (3) Although the petition was not timely filed, this error did not deprive the court of jurisdiction. The statute does not purport to restrict the court's power to act where the petition is not filed within the stated period of 90 days, nor is any penalty attached for noncompliance. Thus the court had jurisdiction and authority to issue its order, despite respondent's failure to file the petition within the stated time.

In Redlands etc. School Dist. v. Superior Court, 20 Cal.2d 348 [125 P.2d 490], our Supreme Court reviewed a judgment claimed to have been rendered in excess of the trial court's *320 jurisdiction because of plaintiff's failure to comply with a statutory requirement respecting the filing of a verified claim. The court said at page 360: "But not every violation of a statute constitutes excess of jurisdiction on the part of a court. ... Where, as here, the statute does not restrict the power of the court but merely sets up a condition precedent ..., we think the violation of the statutory provision constitutes an error of law rather than excess of jurisdiction." (See also Garrison v. Rourke, 32 Cal.2d 430, 435-436 [196 P.2d 884]; 1 Witkin, Cal. Procedure (1954) Jurisdiction, § § 49-52, pp. 320-324.)

(4) Appellant also claims that, even if the court did have jurisdiction to entertain the petition, nevertheless respondent's failure to file the petition at least 90 days before his date for discharge caused the court to conduct the hearing in "... haste which otherwise would not have been necessary," to appellant's prejudice. There is no merit to this contention. Respondent's petition was filed November 12, 1963. The court appointed counsel for appellant, and he was properly represented throughout the proceedings. Adequate time was allowed for the preparation of opposition to the petition. The actual hearing did not take place until December 18, 1963. The transcript of the proceedings reveals that the hearing was full, complete and fair in all respects. We find nothing in the record to support appellant's claim of prejudice because the petition was not timely filed.

Appellant next contends there was a failure to give notice to his parents, as required by section 1801. The evidence was to the effect that the respondent mailed notice to appellant's mother. The letter was not returned. Respondent also attempted personal service upon appellant's father. The sheriff's return indicates that the father could not be found within the county and that he had moved from the address given for purposes of service.

(5) Service of notice of hearing was properly made upon appellant's mother. The proof of service by mail is established by the declaration of a deputy clerk of the juvenile court, made in full compliance with Code of Civil Procedure sections 1012, 1013, and 1013a. (Cf. Welf. & Inst. Code, § § 658-660.)

The notice, served by mail, in the manner described in Code of Civil Procedure section 1013, is presumed to have been received. (Code Civ. Proc., § 1963, subd. 24.) There was no evidence to overcome this presumption. In the absence of any evidence sufficient to overcome the presumption, the certificate of service by mail is sufficient to establish the fact of service. (See *321 Forslund v. Forslund, 225 Cal.App.2d 476, 486 [37 Cal.Rptr. 489].)

(6) It is admitted that notice of the hearing on respondent's petition was not given to appellant's father. We do not think this invalidates the court's order. Appellant was represented by counsel at the hearing. No objection on this ground was raised by appellant or by his counsel. On the contrary, the matter proceeded to a full and complete hearing. The witnesses produced by respondent were cross-examined by appellant. Appellant produced at least one witness in his own behalf. His counsel argued the issues at length. Under the circumstances here present we think appellant waived any right he may have had to object that his father had not been served with notice of the hearing. (See 40 Cal.Jur.2d, Process, Notices and Papers, § 81, p. 107.) Moreover, our own review of the record discloses no prejudice suffered by appellant because of the failure of respondent to notify his father of the proceedings.

(7) Appellant asserts bias on the part of the trial judge. The record does not support this charge. The trial judge did ask questions of one witness, as he had a right to do. The questions asked were proper in all respects. They related principally to the adequacy of the Youth Authority facilities for the care and treatment of the youth offender. No objection was made by appellant to any of the questions asked, nor was any claim of bias or prejudice made at the hearing. (8) Generally, where bias and prejudice against a trial judge is claimed, the issue must be raised when the facts first become known, and in any event, before the matter is submitted for decision. This is so for the reasons stated by the court in Rohr v. Johnson, 65 Cal.App.2d 208, 212 [150 P.2d 5]: "A party should not be allowed to gamble on a favorable decision and then raise such an objection in the event he is disappointed in the result."

Appellant attacks the constitutionality of sections 1800 through 1803 on two grounds. First, he says these provisions of law deny him the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution and article IV, section 25 of the California Constitution. Appellant argues that the Legislature, in enacting these sections, has determined that the only group of physically dangerous persons from which society needs protection is that composed of persons subject to the control of the Youth Authority and that the discrimination thus made between such *322 persons and all other persons in society is unreasonable and arbitrary. Appellant points to the fact that control by the Youth Authority is acquired by reason of a person's age, and that age bears no essential relationship to the possession of mental or physical characteristics which may make his release physically dangerous to the public.

Of course it is true that a propensity for antisocial conduct is not limited to young persons. (9) Nevertheless, "the Legislature may recognize '... degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be clearest.' " (West Coast Hotel Co. v. Parrish, 300 U.S. 379, 400 [57 S.Ct. 578, 81 L.Ed. 703, 108 A.L.R. 1330].) Moreover, it has been recognized that classification based on age is reasonable, even though such classification may determine the punishment to be inflicted. (People v. Turville, 51 Cal.2d 620, 638 [335 P.2d 678]; People v. Soherbing, 93 Cal.App.2d 736, 741 [209 P.2d 796].)

(10) When it is asserted, as it is here, that a statute denies equal protection of the laws, we must remember that the power of the Legislature to classify is broad, and that its exercise involves a wide discretion. In In re Herrera, 23 Cal.2d 206, 212 [143 P.2d 845], the court considered a classification claimed to violate the Fourteenth Amendment to the United States Constitution, and said: " 'The authority and the duty to ascertain the facts which will justify classified legislation must of necessity rest with the legislature, in the first instance, to whom has been given the power to legislate and not to the courts and the decision of the legislature in that behalf is ordinarily conclusive upon the courts. Every presumption is in favor of the validity of the legislative act and the legislative classification will not therefore be disturbed unless it is palpably arbitrary in its nature and neither founded upon nor supported by reason.' " (11) Here the Legislature has determined that society needs

protection from those young persons committed to the Youth Authority where at the time of their release such persons are physically dangerous to the public because of "mental or physical deficiency, disorder or abnormality." We think such classification is neither arbitrary nor unreasonable. On the contrary, appellant's continued detention is supported by reason as well as a humanitarian consideration for his own welfare. Although detained, appellant still has available to him all the diagnostic and treatment facilities of the Youth Authority. The object of his detention remains the same, namely that he ultimately be returned to and assume his place in society without danger to himself or to others. *323

Appellant also contends that the cited code sections are so vague as to violate the due process clause of the Fourteenth Amendment to the United States Constitution. He bases his argument on the proposition that the phrases "physically dangerous" and "mental or physical deficiency, disorder or abnormality" as used in section 1800 are equivalent to the phrase "inimical to the public interest," held unconstitutionally vague in People v. Saad, 105 Cal.App.2d Supp. 851 [234 P.2d 785]. But the phrase "inimical to the public interest" is difficult to define with any degree of certainty and even more difficult to apply. (12) On the other hand, the meaning of such phrases as "physically dangerous" and "mental or physical deficiency" is subject to reasonable definition, and may readily be applied in specific factual situations. The facts of this case offer an apt illustration. Here the unfortunate events of appellant's childhood are revealed in the various reports of psychiatrists who have examined him. There is a history of violent events recorded, ranging from fighting with fellow inmates, to a homicidal attack upon his foster parents. The facts demonstrate that appellant is indeed a "dangerous person" and one from whom society is entitled to protection, and in turn one to whom society owes a duty to aid and help. We cannot uphold appellant's attack upon the language of the statute on the ground that it is unconstitutionally vague. (See People v. Levy, 151 Cal.App.2d 460, 465 [311 P.2d 897]; Minnesota ex rel. Pearson v. Probate Court, 309 U.S. 270, 273 [60 S.Ct. 523, 84 L.Ed. 744, 126 A.L.R. 530].)

Our review of the constitutionality of sections 1800 through 1803 is limited to a consideration of the objections raised by appellant, namely that these provisions of law deny him the equal protection of the laws, and are so vague and indefinite as to violate the due process clause of the Fourteenth Amendment to the United States Constitution. No other constitutional objections have been raised or considered.

Judgment affirmed.

Draper, P. J., and Devine, J., concurred.

A petition for a rehearing was denied June 8, 1965, and appellant's petition for a hearing by the Supreme Court was denied July 7, 1965. *324

Cal.App.1.Dist.,1965.

People v. Cavanaugh

END OF DOCUMENT

142 Cal.App.3d 29
190 Cal.Rptr. 721
(Cite as: 142 Cal.App.3d 29)

THE PEOPLE, Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; VERNAL D., Real Party in Interest.

Civ. No. 67975.

Court of Appeal, Second District, Division 4, California.

Apr 20, 1983.

SUMMARY

The People petitioned the Court of Appeal for a writ of mandate after the trial court ordered the dismissal of an application to extend the commitment of an allegedly dangerous youthful offender (Welf. & Inst. Code, § 1800), on grounds it had no jurisdiction to authorize commitment beyond the date on which the juvenile would have been confined for the maximum period for which an adult could have been sentenced to prison. The Court of Appeal issued a peremptory writ of mandate directing the trial court to conduct a hearing on the extended commitment application consistent with its opinion. The court held the rule that a juvenile may not be committed for any period of time longer than that for which an adult counterpart could be imprisoned for the same offense limits only the period of initial detention which may be served by a youthful offender. It does not limit or otherwise affect the potential duration of extended commitments on a finding of physical dangerousness to the public due to a mental deficiency or abnormality. Thus, the court held the trial court erred in ordering the application dismissed. However, the court also held that, unless he waived it, the juvenile was entitled to a trial by jury on the issue of dangerousness, that his dangerousness must be established by proof beyond a reasonable doubt, and that he could not be involuntarily committed on anything less than a unanimous jury verdict. (Opinion by Woods, P. J., with Kingsley and McClosky, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Delinquent, Dependent, and Neglected Children § 36--Proceedings--Youth Correction--Commitment to Youth Authority--Extension of Commitment--Danger to Public.

In proceedings to extend a juvenile's commitment to the Youth Authority on grounds he was psychotic and too dangerous for release (Welf. & Inst. Code, § 1800 et seq.), the trial court erred in concluding it had no jurisdiction to authorize commitment beyond the date on which the juvenile would have been confined for the maximum period for which an adult, for the same offense, could have been sentenced to prison, and in dismissing the extended commitment application on such ground. The rule that a juvenile may not be committed for any period of time longer than that for which an adult counterpart could be imprisoned for the same offense limits only the period of initial detention which may be served by a youthful offender. It does not limit or otherwise affect the potential duration of extended commitments on a finding of physical dangerousness to the public due to a mental deficiency or abnormality.

[See Cal.Jur.3d, Delinquent and Dependent Children, § 119; Am.Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 33.]

(2) Delinquent, Dependent, and Neglected Children § 36--Proceedings--Youth Correction--Commitment to Youth Authority--Extension of Commitment--Failure to File Timely Application.

The trial court had jurisdiction to entertain an application to extend a juvenile's commitment to the Youth Authority on grounds he was too dangerous for release, even though the application was not filed at least 90 days before the time of discharge otherwise required (Welf. & Inst. Code, § 1800), where such 90-day provision was not jurisdictional. Even assuming considerations of due process required a balancing of the prejudicial effect of the delay against the justification therefor, the four weeks expended (from the time the Youthful Offender Parole Board ordered a petition) in documenting the need for an extended commitment was not unreasonable. Further, the record reflected no prejudice to the juvenile by virtue of the late filing.

(3a, 3b) Delinquent, Dependent, and Neglected Children § 18--Proceedings--Right to Jury Trial--

Unanimity Requirements.

Consistent with principles of equal protection and due process, the extended commitment of a dangerous youthful offender (Welf. & Inst. Code, § 1800) must be based on a unanimous jury verdict, unless a jury is waived. Dangerous youthful offenders are entitled to the same constitutional protections as mentally disordered sex offenders and narcotics addicts, both of whom are entitled to a unanimous verdict prior to involuntary commitment.

(4) Delinquent, Dependent, and Neglected Children § 36--Proceedings--Youth Correction Commitment to Youth Authority--Extension of Commitment--Standard of Proof.

Consistent with due process requirements under the state and federal Constitutions, the extended commitment of a dangerous youthful offender (Welf. & Inst. Code, § 1800) must be justified by proof beyond a reasonable doubt. So drastic an impairment *31 of liberty as is suffered by involuntary commitment may not be supported on any lesser standard than proof beyond a reasonable doubt.

COUNSEL

Robert H. Philibosian, District Attorney, Donald J. Kaplan and Dirk L. Hudson, Deputy District Attorneys, for Petitioner.

No appearance for Respondent.

Lloyd Jeffrey Wiatt and Richard E. Ross for Real Party in Interest.

WOODS, P. J.

We are presented with a petition for writ of mandate filed on behalf of the People of the State of California, seeking the annulment of a trial court order dismissing an application to extend the time of Youth Authority control over Vernal D., the real party in interest. We issued a stay of the superior court dismissal, and ordered that Vernal D. not be released from confinement under the California Youth Authority commitment, pending resolution of the within writ petition.

We have concluded that the trial court erroneously dismissed the application to extend Youth Authority control. We accordingly issue a writ of mandate, directing the superior court to conduct a hearing on the People's petition.

In August 1980, Vernal D. was committed to the California Youth Authority for a period of three years, with credit for previous time in confinement. From the time of his commitment until the fall of 1982, numerous incidents of assaultive behavior were reported concerning Vernal D. In September and October 1982, reports were submitted to the Youthful Offender Parole Board, recommending extended commitment, pursuant to Welfare and Institutions Code [FN1] section 1800 et seq., on the ground that he was too dangerous for release. [FN2] *32

FN1 All references in this opinion to code sections shall refer to the Welfare and Institutions Code, unless otherwise stated.

FN2 Section 1800 provides, in part: "Whenever the Youthful Offender Parole Board determines that the discharge of a person from the control of the Youth Authority ... would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality, the board, through its chairman, shall make application to the committing court for an order directing that the person remain subject to the control of the authority beyond such time ..."

On November 18, 1982, the board ordered that Vernal D. be returned to court for extension of jurisdiction, based on his psychotic condition. A petition for extended commitment was filed with the superior court by the district attorney's office on January 6, 1983.

At the time of the hearing on the petition, the trial court dismissed the petition, relying on People v. Olivas (1976) 17 Cal.3d 236 [131 Cal.Rptr. 55, 551 P.2d 375]. The court concluded that Vernal D., on March 5, 1983, would have been confined to the California Youth Authority for the maximum period for which an adult could have been sentenced to prison. Therefore, the court concluded that it had no jurisdiction to authorize commitment beyond March 5.

(1) We address first petitioner's contention that the trial court improperly found extended detention to be in violation of People v. Olivas, supra., 17 Cal.3d 236. Petitioner correctly asserts that there is no merit to the trial court's concern that People v.

Olivas, supra, prohibited the extended commitment of dangerous persons. The court in Olivas held that a youthful offender may not be committed to the Youth Authority for any period of time longer than that for which an adult counterpart would have been sentenced to jail or prison for the same offense. That holding, affecting commitments in criminal proceedings, is of no consequence in extended involuntary commitment proceedings instituted to provide additional treatment to dangerous persons.

In In re Gary W. (1971) 5 Cal.3d 296, 301 [96 Cal.Rptr. 1, 486 P.2d 1201], the Supreme Court considered the constitutionality of procedures in section 1800 et seq., and observed: "The issue is whether the statutory scheme here challenged (a) 'imprisons' petitioner 'as a criminal,' or (b) constitutes 'compulsory treatment' of petitioner as a sick person requiring ' periods of involuntary confinement.' [Citation.] The question is easily resolved, for the Legislature has been at pains to assure that confinement pursuant to sections 1800-1803 shall be only for the purpose of treatment." (See also People v. Smith (1971) 5 Cal.3d 313 [96 Cal.Rptr. 13, 486 P.2d 1213].)

The Supreme Court in Gary W. discussed the "demonstrably civil purpose of sections 1800-1803," (5 Cal.3d at p. 302) and concluded that commitment beyond the petitioner's normal release date, because of a finding of danger to society, violated neither due process nor equal protection, so long as the petitioner was provided with a right to trial by jury.

The trial court apparently believed that Olivas, rendered some years after the Supreme Court's decision in Gary W., invalidated its conclusions. That it did not do so is evident from numerous recent California Supreme Court decisions *33 citing with approval both the extended commitment proceeding in section 1800 and the holding in In re Gary W.

In In re Moye (1978) 22 Cal.3d 457 [149 Cal.Rptr. 491, 584 P.2d 1097], the Supreme Court established acceptable procedures for institutional confinement of persons committed to the Department of Health following their acquittal of criminal charges due to insanity. The court enumerated other approved involuntary proceedings as follows: "In addition to the present MDSO procedure, we further note a general and growing legislative pattern to preclude or minimize the risk of an indefinite commitment to state institutions by requiring periodic review and recommitment hearings in which the burden of proving the dangerousness of the committee's condition is placed on the state. (See Welf. & Inst. Code, § 1800 [two-year extended commitment for Youth Authority wards deemed dangerous at the time of discharge], 3201 [three-year extended commitment for narcotics addicts not cured after seven-year initial commitment], 5304 [LPS act commitment of dangerous persons limited to ninety days, unless new threats or harm occur], 5361 [one-year commitment of gravely disabled persons, unless new petition for conservatorship filed], 6500.1 [one-year commitment for mentally retarded persons unless recommitment justified], 6514 [one-year commitment for developmentally disabled persons, unless recommitment justified].)" (Id., at p. 465.)

Similarly, in Conservatorship of Hofferber (1980) 28 Cal.3d 161, 172 [167 Cal.Rptr. 854, 616 P.2d 836], the Supreme Court compared and contrasted the legislative schemes for the continued confinement of dangerous persons, observing: "Variation of the length and conditions of confinement, depending on degrees of danger reasonably perceived as to special classes of persons, is a valid exercise of state power. [¶] ... [¶] The California scheme permits long- term, renewable commitments of persons found not guilty by reason of insanity (Pen. Code, § 1026 et seq.), mentally disordered sex offenders (MDSO's) (§ 6300 et seq.), and those committed to the Youth Authority (§ 1800 et seq.; People v. Smith (1971) 5 Cal.3d 313, 317 ...)-in each case on proof that they remain dangerously disturbed."

People v. Olivas, supra., 17 Cal.3d 236, limits only the period of initial detention which may be served by a youthful offender. It does not limit or otherwise affect the potential duration of extended commitments on a finding that because of mental deficiency or abnormality the youth is physically dangerous to the public.

II

(2)Vernal D. contends that even if Olivas did not authorize dismissal of the within application, it should have been dismissed, inasmuch as it was not timely *34 filed. Section 1800 provides that the "application shall be filed at least 90 days before the time of discharge otherwise required." Vernal D.

argues that although the 90-day provision of section 1800 is not jurisdictional (citing People v. Echols (1982) 138 Cal.App.3d 838 [188 Cal.Rptr. 628]), nonetheless the petition should be dismissed unless the prosecution can show justification for failure to comply with the statutory time limit.

The following chronology led to the filing of the instant petition: On August 11, 1980, Vernal D. was committed to the California Youth Authority for the period of 3 years (less credit of 159 days). From the time of his commitment until September 1982, numerous incidents of assaultive behavior were committed.

On September 28, 1982, the program administrator of the intensive treatment program in which Vernal D. was participating recommended that he be returned to court for extended detention pursuant to section 1800.

On November 18, 1982, the Youthful Offender Parole Board ordered that Vernal D. be returned to court for extension of jurisdiction based on his psychotic condition.

On December 14, 1982, staff counsel for the Youthful Offender Parole Board filed his evaluation and report, recommending extended commitment. On December 17, a letter was sent from the board to the district attorney requesting that a petition for extended detention be filed. The petition was filed with the superior court by the district attorney's office on January 6, 1983.

Vernal D. argues that inasmuch as he was scheduled for release from commitment on March 5, 1983 (the completion of his three-year commitment term), the petition was not filed in the superior court at least ninety days prior to that date. Therefore, it is argued, the application should have been dismissed by the superior court.

An identical contention was resolved to the contrary in In re Cavanaugh (1965) 234 Cal.App.2d 316, 319 [44 Cal.Rptr. 422]: "Appellant argues that this failure to comply with the 90-day requirement of section 1800 divested the court of jurisdiction. He urges that the 90-day period established by statute operates in the same fashion as a statute of limitations in criminal cases, where the running of the statute against a charged offense operates to deprive the court of jurisdiction. [Citation.] This is not correct. Appellant was originally committed to the Youth Authority by the juvenile court. All proceedings leading up to the order here challenged took place in that court. Such proceedings are civil in nature, designed to serve the spiritual, emotional, mental and physical welfare of the minor and the best interests of the State. [Citations.] Section 1800, *35 vests jurisdiction in the committing court to hear and determine petitions filed thereunder. Although the petition was not timely filed, this error did not deprive the court of jurisdiction. The statute does not purport to restrict the court's power to act where the petition is not filed within the stated period of 90 days, nor is any penalty attached for noncompliance. Thus, the court had jurisdiction and authority to issue its order, despite respondent's failure to file the petition within the stated time."

We agree with the conclusion of the Cavanaugh court. Nor are we persuaded that any different result is compelled by People v. Echols, supra, 138 Cal.App.3d 838. The Echols court held that the time limit requirements of section 1026.5 are not jurisdictional. However, the court concluded that considerations of due process required an inquiry into whether the defendant was harmed by the late filing. The court likened the problem to that presented by speedy trial violations and concluded that the proper test involved the balancing of the prejudicial effect of the delay against the justification for the delay. (People v. Echols, supra, at p. 842.) The court there found the justification adequate and the prejudice nonexistent and thus affirmed the commitment order.

Here, Vernal D. argues that no justification for the delay having been demonstrated, the petition cannot be entertained. Even accepting the argument that Echols (involving a different code section) imposes a due process analysis on a late filing under section 1800, we do not agree with the conclusion reached by Vernal D.

The record reflects that the December 18, 1982, letter from the Youthful Offender Parole Board to the district attorney's office, requesting the filing of a petition, enclosed with it reports in support of the petition. Two reports, dated December 14, elaborated on Vernal D.'s history of assaultive behavior and detailed the many psychological and psychiatric reports prepared in connection with his conduct and treatment. To be timely, the superior

court petition should have been filed by December 5, 1982. The order of the Youthful Offender Parole Board, requiring a petition, was not issued until November 18. We do not believe that the expenditure of approximately four weeks for documentation of the need for extended commitment is unreasonable. Additionally, the record reflects no prejudice to Vernal D. by virtue of the late filing. Therefore, the court had jurisdiction to entertain the petition for extended commitment.

III

(3a)Finally, Vernal D. contends that the statute is unconstitutional, in that it authorizes extended commitment based on a less than unanimous jury verdict. We agree with Vernal D. that a commitment based on a verdict by only three-fourths of the members of the jury does not comport with either due process or *36 equal protection. Therefore, at the extended commitment hearing, to be held under the terms of the writ which we hereby issue, Vernal D. may be found dangerous to the public and subject to involuntary confinement only on the basis of a verdict by a unanimous jury.

This conclusion is mandated under the principles of equal protection. Numerous circumstances exist in California law under which a person may be involuntarily committed. As to each, a statutory and judicial scheme has been created to assure that the commitment comports with due process. With respect to trial by jury, no involuntary commitment procedure remains on the books allowing a less than unanimous jury verdict except for the extended commitment of dangerous youthful offenders under section 1800. As to mentally disordered sex offenders, sections 6318 and 6321 originally authorized a verdict by three- fourths of the jury; in People v. Feagley (1975) 14 Cal.3d 338 [121 Cal.Rptr. 509, 535 P.2d 373], the California Supreme Court mandated a unanimous verdict. Section 6509 was silent on the number of jurors required to confine mentally retarded dangerous persons. In In re Hop (1981) 29 Cal.3d 82 [171 Cal.Rptr. 721, 623 P.2d 282], the Supreme Court declared that nothing less than a unanimous verdict would comport with due process. Likewise, section 3108 authorized involuntary commitment of narcotics addicts by three-quarters of the jury. In People v. Thomas (1977) 19 Cal.3d 630 [139 Cal.Rptr. 594, 566 P.2d 228], the Supreme Court declared that due process and equal protection mandated a unanimous verdict. Sections 5302 and 5303 require a verdict by a unanimous jury in order to authorize the involuntary commitment of imminently dangerous persons, or those who are gravely disabled, suicidal, or inebriate.

Unquestionably, equal protection compels a unanimous verdict for the involuntary commitment of youthful offenders as well. No distinctions are evident which would justify disparate treatment of youthful offenders, committed to the California Youth Authority, who are denied release based on a finding that they are dangerous to themselves or others. Both equal protection and due process obviously compel the requirement of a unanimous jury verdict. The courts have soundly rejected arguments that these proceedings are civil in nature and therefore entitled to different treatment. (4)(See fn. 3)., (3b)The consequence of the proceeding, involuntary incarceration, triggers the full panoply of due process protections. [FN3] *37

FN3 Although Vernal D. does not discuss the standard of proof which should be applied in these proceedings, for the guidance of the trial court we explain that in order to comply with the requirements of the due process clauses of the California and federal Constitutions, extended detention under section 1800 must be justified by proof beyond a reasonable doubt. Section 1801.5 implies, in providing that "[t]he trial shall be had as provided by law for the trial of civil cases," that proof by a preponderance of the evidence is satisfactory. It is now well established in California that so drastic an impairment of liberty as is suffered by involuntary commitment may not be supported on any lesser standard than proof beyond a reasonable doubt. (People v. Feagley, supra., 14 Cal.3d 338, 345; People v. Burnick (1975) 14 Cal.3d 306, 310 [121 Cal.Rptr. 488, 535 P.2d 352].)

Since the decision in Gary W., the Supreme Court has held that both mentally disordered sex offenders (People v. Feagley, supra., 14 Cal.3d 338), and narcotics addicts (People v. Thomas, supra., 19 Cal.3d 630), are entitled to a unanimous verdict prior to involuntary commitment. Similarly, if for no other reason than that the Supreme Court has previously determined that no constitutional distinction exists among those committees, dangerous youthful offenders are entitled to the same constitutional protections.

Let a peremptory writ of mandate issue directing the trial court to conduct a hearing on petitioner's application to extend Youth Authority control over Vernal D.; unless waived, Vernal D. is entitled to a trial by jury on the issue of dangerousness; his dangerousness must be established by proof beyond a reasonable doubt; and he may not be involuntarily committed on anything less than a unanimous verdict of that jury.

Kingsley, J., and McClosky, J., concurred.

A petition for a rehearing was denied May 11, 1983, and the petition of real party in interest for a hearing by the Supreme Court was denied July 27, 1983. *38

Cal.App.2.Dist., 1983.

People v. Superior Court of Los Angeles County

END OF DOCUMENT

14 Cal.4th 580
14 Cal.4th 1282D, 927 P.2d 310, 59 Cal.Rptr.2d 200, 96 Cal. Daily Op. Serv. 9329,
96 Daily Journal D.A.R. 15,370
(Cite as: 14 Cal.4th 580)

THE PEOPLE, Plaintiff and Appellant,

v.

GORDON EUBANKS et al., Defendants and Respondents.

[Modification [FN*] of opinion (14 Cal.4th 580; 59 Cal.Rptr.2d 200, 927 P.2d 310).]

FN* This modification requires movement of text affecting pages 592-600 of the bound volume report.

No. S049490.

Supreme Court of California

Feb 26, 1997.

THE COURT.

The opinion herein, filed December 23, 1996, appearing at 14 Cal.4th 580, is modified as follows:

In footnote 4, on page 592 [typed opn. at pp. 13-14], the last sentence of the second paragraph beginning "We express no view" and ending "under section 995." is deleted in its entirety, and in its place is inserted the following: "We expressly reserve the question whether availability of a remedy under section 995 was affected by the addition of section 1424 and thus express no opinion here regarding what standard would govern motions brought under section 995."

This modification does not affect the judgment.

THE PEOPLE, Plaintiff and Appellant,

v.

GORDON EUBANKS et al., Defendants and Respondents.

No. S049490.

Supreme Court of California

Dec 23, 1996.

SUMMARY

Two men were charged with felonies involving the alleged theft of trade secrets from a company that developed computer programs. During pretrial proceedings, defendants learned that the company had contributed about $13,000 to the cost of the district attorney's investigation. The trial court granted defendants' motion to disqualify, or "recuse," the entire office of the district attorney, finding that the company's financial assistance created a conflict of interest for the prosecutor, within the meaning of Pen. Code, § 1424. (Superior Court of Santa Cruz County, Nos. CR6748 and CR6749, William M. Kelsay, Judge.) The Court of Appeal, Sixth Dist., No. H011751, reversed the recusal order, concluding that any conflict was insufficiently grave to justify recusal.

The Supreme Court transferred the cause to the Court of Appeal with directions to vacate its previous judgment and dismiss the appeal as moot. The court held that although the trial court did not err in concluding that the company's financial assistance created a conflict of interest for the prosecutor, i.e., it evidenced a reasonable possibility that the prosecutor might not have exercised his discretionary functions in an evenhanded manner, the trial court erred in failing to apply the second part of the test for disqualification set out in Pen. Code, § 1424, that is, whether the resulting conflict was so grave as to make fair treatment of the defendants in all stages of the criminal proceedings unlikely if the district attorney were not recused. However, the court held that the Court of Appeal erred in determining that, assuming a conflict existed, it was not, as a matter of law, grave enough to justify recusal. It could not be said that had the trial court addressed the second part of the test for disqualification, it would have abused its discretion in finding the conflict disabling. (Opinion by Werdegar, J., with George, C. J., Mosk, Kennard, Baxter, Chin, and Brown, JJ., concurring. Concurring opinion by George, C. J., with Mosk, J., concurring.) *581

HEADNOTES

Classified to California Digest of Official Reports

(1) District and Municipal Attorneys § 2--Powers and Duties--Prosecutorial Discretion.

In California, all criminal prosecutions are conducted in the name of the People of the State of California and by their authority (Gov. Code, § 100, subd. (b)). California law does not authorize private prosecutions. Instead, the prosecution of criminal offenses on behalf of the People is the sole responsibility of the public prosecutor, who ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek. No private citizen, however personally aggrieved, may institute criminal proceedings independently, and the prosecutor's own discretion is not subject to judicial control at the behest of persons other than the accused."

(2) District and Municipal Attorneys § 1--Recusal--Statutory Grounds-- Conflict of Interest Rendering Fair Trial Unlikely--Nature of Disqualifying Conflict.

Under Pen. Code, § 1424, which establishes both procedural and substantive requirements for a motion to disqualify, or "recuse," the district attorney, such a motion must not be granted unless the evidence shows that a conflict of interest exists such as would render it unlikely that the defendant would receive a fair trial. By its terms, § 1424 allows recusal if the conflict of interest is so grave as to make a fair trial unlikely. The language of the statute establishes a two-part test: (1) is there a conflict of interest and (2) is the conflict so severe as to disqualify the district attorney from acting. Thus, while a conflict exists whenever there is a reasonable possibility that the district attorney's office may not exercise its discretionary function in an evenhanded manner, the conflict is disabling only if it is so grave as to render it unlikely that defendant will receive fair treatment during all portions of the criminal proceedings. Further, whether the prosecutor's conflict is characterized as actual or only apparent, the potential for prejudice to the defendant-the likelihood that the defendant will not receive a fair trial-must be real, not merely apparent, and must rise to the level of a likelihood of unfairness. Thus, the statute does not allow disqualification merely because the district attorney's further participation in the prosecution would be unseemly, would appear improper, or would tend to reduce public confidence in the impartiality and integrity of the criminal justice system.

(3) District and Municipal Attorneys § 1--Recusal--Review. In reviewing the denial of a motion to recuse a district attorney, the role of *582 the appellate court is to determine whether there is substantial evidence to support the trial court's factual findings and, based on those findings, whether the trial court abused its discretion in denying the motion.

(4) Appellate Review § 142--Review--Discretion of Trial Court--Limitations.

The discretion of a trial court is subject to the limitations of legal principles governing the subject of its action.

(5) District and Municipal Attorneys § 1--Recusal--Two-part Statutory Test--Conflict of Interest--Gravity of Conflict Rendering Fair Trial Unlikely--Payment by Victim for Expenses of Criminal Investigation.

In a prosecution of two men for theft of trade secrets from a company that developed computer programs, although the trial court did not err in concluding that the company's financial contribution to the cost of the criminal investigation created a conflict of interest for the prosecutor, i.e., it evidenced a reasonable possibility that the prosecutor might not have exercised his discretionary functions in an evenhanded manner, the trial court erred in failing to apply the second part of the test for disqualification, or "recusal," set out in Pen. Code, § 1424, that is, whether the resulting conflict was so grave as to make fair treatment of the defendants in all stages of the criminal proceedings unlikely if the district attorney were not recused. In the absence of contrary evidence, it is assumed that the trial court applied the correct legal standard. In this case, however, there was ample evidence that the trial court failed to apply the complete test under § 1424. The court's oral remarks at the recusal hearing, which were the only record of the court's reasoning, were directed solely at the first portion of the two-part statutory test. The court repeatedly stated the standard as a "reasonable possibility" of unfairness to defendants and nowhere addressed whether the conflict was so grave as to render fair treatment unlikely. The trial court thus determined only that the district attorney suffered from a conflict of interest and never addressed whether that conflict was, under the proper standard, disabling.

[See 4 Witkin & Epstein, Cal. Criminal Law (2d

ed. 1989) § 1793.]

(6) District and Municipal Attorneys § 1--Recusal--Statutory Grounds-- Conflict of Interest--Gravity of Conflict Rendering Fair Trial Unlikely-- Payment by Victim for Expenses of Criminal Investigation--Appellate Review of Trial Court's Finding Conflict Was Disabling.

In a prosecution of two men for theft of trade secrets from a company that developed computer programs, in which the trial court properly concluded that the company's contribution of about *583 $13,000 to the cost of the criminal investigation created a conflict of interest for the prosecutor, the Court of Appeal erred in determining that, assuming a conflict existed, it was not, as a matter of law, grave enough to justify disqualification, or "recusal," of the district attorney. Although the trial court erred in failing to apply the second part of the test for disqualification set out in Pen. Code, § 1424, that is, whether the resulting conflict was so grave as to make fair treatment of the defendants in all stages of the criminal proceedings unlikely if the district attorney were not recused, it could not be said that had the trial court addressed the second part of the test, it would have abused its discretion in finding the conflict disabling. First, the fact that the largest payment of $9,450 was payment of money for a debt already incurred by the district attorney supported recusal. Second, the large size of the contributions tended to show that recusal was within the trial court's discretion. Finally, the trial court's assessment that the prosecution's case was factually weak supported the decision to recuse, since a factually weak case is more subject than a strong case to influence by extraneous financial considerations.

COUNSEL

Daniel E. Lungren, Attorney General, George Williamson, Chief Assistant Attorney General, Ronald A. Bass, Assistant Attorney General, Michael D. O'Reilley, Martin S. Kaye and Eugene W. Kaster, Deputy Attorneys General, for Plaintiff and Appellant.

Gil Garcetti, District Attorney (Los Angeles), George M. Palmer and Shirley S. N. Sun, Deputy District Attorneys, as Amici Curiae on behalf of Plaintiff and Appellant.

Charles C. Marson, Morgan, Ruby, Schofield, Franich & Fredkin, Ruby & Schofield, Allen Ruby, Remcho, Johansen & Purcell, Robin B. Johansen, Joseph Remcho, Nolan & Armstrong and Thomas J. Nolan for Defendants and Respondents.

Peter A. Chang, Jr., and Vicki I. Podberesky as Amici Curiae on behalf of Defendants and Respondents.

WERDEGAR, J.

When the victim of an alleged crime contributes financially to the costs of the district attorney's investigation, does the district *584 attorney thereafter suffer from a disabling conflict of interest requiring recusal under Penal Code section 1424? On this question of first impression, we hold such financial assistance to the prosecutor's office may indeed disqualify the district attorney from acting further in a case, if the assistance is of such character and magnitude "as to render it unlikely that defendant will receive fair treatment during all portions of the criminal proceedings." (People v. Conner (1983) 34 Cal.3d 141, 148 [193 Cal.Rptr. 148, 666 P.2d 5].) In this case, where a corporation alleged to be the victim of trade secrets theft contributed around $13,000 to the cost of the district attorney's investigation, the superior court did not abuse its discretion in finding the victim's financial assistance created a conflict of interest for the prosecutor. The trial court did err in failing to apply the further test set out in Penal Code section 1424: whether the resulting conflict was so severe as to make fair treatment of the defendants unlikely. We conclude, however, that such a finding would not, on this record, be an abuse of discretion.

Factual and Procedural Background

Defendants Gordon Eubanks and Eugene Wang were accused, by grand jury indictment, of conspiracy to steal trade secrets (Pen. Code, §§ 182, 499c), [FN1] conspiracy to receive stolen property (§§ 182, 496), and conspiracy to access and make use of computer data without permission (§§ 182, 502, subd. (c)(2)). In addition to these joint conspiracy counts, Wang was charged with several counts of trade secret theft (§ 499c) and unlawful data use (§ 502, subd. (c)(2)), while Eubanks was charged with several counts of receiving stolen

property (§ 496).

FN1 Unless otherwise specified, all further statutory references are to the Penal Code.

Both defendants moved to disqualify the Santa Cruz County District Attorney for a conflict of interest pursuant to section 1424. After an evidentiary hearing, the superior court granted the recusal motion. As permitted under section 1424, the Attorney General and the Santa Cruz County District Attorney, both of whom had appeared in the superior court to oppose recusal, appealed the ruling. The Court of Appeal reversed. We granted review on defendants' petition. [FN2]

FN2 After oral argument was held in this matter, the charges against Eubanks and Wang were dismissed on request of the Santa Cruz County District Attorney. Although the matter is thus rendered moot, we exercise our discretion to resolve the legal issues raised, which are of continuing public interest and are likely to recur. (Baluyut v. Superior Court (1996) 12 Cal.4th 826, 829, fn. 4 [50 Cal.Rptr.2d 101, 911 P.2d 1]; Liberty Mut. Ins. Co. v. Fales (1973) 8 Cal.3d 712, 715-716 [106 Cal.Rptr. 21, 505 P.2d 213].)

In September 1992, defendant Eugene Wang was a vice-president of Borland International, a software developer located in Scotts Valley (Santa *585 Cruz County). Defendant Gordon Eubanks was president and chief executive officer of Symantec Corporation, a competitor of Borland. In July of 1992, Wang had expressed dissatisfaction with a Borland management reorganization and threatened to resign. On September 1, 1992, he submitted his resignation. Fearing Wang might have conveyed internal Borland information to outsiders, Borland officers reviewed Wang's electronic mail files. They found several messages to Eubanks containing what they believed was confidential Borland information. Borland contacted the Scotts Valley police, who in turn sought investigative assistance from the district attorney's office.

During the night of September 1, and into the morning of September 2, 1992, Borland officials worked with representatives of the police department and district attorney's office preparing warrant affidavits for searches of defendants' residences and Symantec headquarters. Apparently because the police department and prosecutor's office lacked staff with the expertise to search the Symantec computers, Alan Johnson, the district attorney's chief inspector, asked Borland officials if Borland could provide one or more technically competent employees to assist in the search. The Borland representatives declined because they did not want Borland employees exposed to Symantec secrets; they suggested independent consultants be used instead.

Two computer specialists were located to assist with the September 2 search: David Klausner, who was referred by Borland's outside counsel, and Stephen Strawn, who had worked with the district attorney's office on prior occasions. Chief Inspector Johnson and John Hansen, associate general counsel for Borland, both testified that on the night of September 1 and 2, at the request of the district attorney's office, Borland agreed to pay for Klausner's services.

According to Johnson, Spencer Leyton, a senior Borland executive, indicated Borland's willingness to spend up to $10,000, and possibly more, for experts to assist in the investigation. Leyton, however, did not recall discussing the matter of expert assistance at all, although he was present and talked with Johnson on the night and morning of September 1 and 2. Borland records show a $25,000 "blanket" purchase order was drawn up and approved by the legal department in November 1992 for "miscellaneous services and fees / Symantec lawsuit." Borland records for the subsequent payments to Klausner, Strawn and others for their work on the criminal investigation bear numerical references to this purchase order.

Klausner and Strawn accompanied representatives of law enforcement agencies who executed the warrant on September 2. Klausner submitted his *586 bill for $1,400 directly to Borland on September 14, 1992. Borland paid it by a check dated January 6, 1993.

Strawn continued to work on the criminal investigation for several weeks, into October 1992, assisting the district attorney's office in retrieving and printing the contents of seized computer disc drives. In late September 1992, knowing Strawn was working on the case, Chief Inspector Johnson discussed with Arthur Danner, the Santa Cruz County District Attorney, whether Borland should be asked to pay Strawn's anticipated bill. Danner

made no decision at that time. Johnson testified he then asked Borland executive Leyton whether Borland was "still willing to assist us by carrying the cost of the technicians that were necessary to process this case." Leyton, according to Johnson, answered affirmatively. Sometime after that discussion, Johnson again broached the question with Danner, who then approved submitting Strawn's invoices to Borland.

District Attorney Danner similarly testified he first considered the payment question while Strawn was still working with the office's investigators. Asked whether, at that time, he contemplated abandoning the prosecution if Borland did not pay for Strawn's services, Danner testified: "No.... It was simply at that point to have the investigation proceed because at that point we needed the additional materials and so that's what Mr. Straun [sic] was working on to allow us to review those materials."

Danner articulated two reasons for his ultimate decision to allow Borland to pay for Strawn's assistance: First, he understood Strawn's role to be purely technical, and not to involve giving any opinion as to whether the materials retrieved were trade secrets. Danner considered Strawn's limited role important because it meant Borland's payment of his fee was less likely to become a significant issue at trial. Danner's second reason for approving the payment was that "at that time we were experiencing serious budgetary constraints in a particular fund that we utilize to pay professional and special witnesses and we really had very little money in our budget ...."

Strawn submitted his bill for $9,450 to the district attorney's office on October 31, 1992. After getting approval from Danner, Chief Inspector Johnson transmitted it to Borland. Borland attorney John Hansen testified he received the invoice and "sent it along for payment." His understanding was that Strawn's services had been necessary because "somebody had to go on the search along with the authorities," and hiring Strawn thus "relieved us from having to send a Borland employee into a competitor's plant." After Borland's general counsel, relying on Hansen's recommendation, approved the payment, Borland paid Strawn's bill by a check dated January 12, 1993. [*587]

In January 1993, Strawn submitted an additional invoice for $2,700 to the district attorney's office for work done in November and December 1992. Johnson forwarded this bill to Borland as well, but as of the date of the evidentiary hearing it had not been paid.

Finally, Borland paid a private service to transcribe audiotapes of interviews with Borland employees, for use by the prosecutor. John Hansen testified a district attorney's investigator told him, sometime in late 1992, that the investigation was "indefinitely" delayed because a clerical backlog in the district attorney's office was preventing the office staff from transcribing the tapes. Hansen offered to have Borland pay someone to make the transcriptions. In January and February 1993, Borland made payments of $1,008 and $1,224 to a reporting service for transcription of the tapes.

Defendants initially moved to recuse the entire office of the district attorney on the ground that Deputy District Attorney Jonathan Rivers, who had worked on the Eubanks-Wang case, had left the district attorney's office and been retained by Borland to work on Borland's related civil action against Symantec. In the course of a hearing on this issue, defendants learned of the payments by Borland, which were then made a separate ground for requesting recusal.

After hearing the above evidence, the superior court concluded that while Rivers's change of employment did not require recusal of the district attorney's office, the payments did. The court's rationale appears from its comments during argument on the motion (no written statement of reasons was filed). Discounting mere "appearances ... of impropriety," the court framed the issue as whether the victim's "payment of money for a debt already incurred" by the district attorney creates "an actual conflict" for the prosecutor. The standard to be applied, as the court understood it, was whether "the evidence provides a reasonable possibility that the D.A.'s office may not exercise its discretionary function in an even-handed manner."

The court emphasized Borland's payment of Strawn's bill: "[W]e have a situation here where there was a debt ... that's already been incurred. That person was going to get paid regardless of who paid it. Borland happens to make the offer and in fact does pay it, and pays other bills as well. Doesn't that put the District Attorney in a position, as a human being, to feel a greater obligation for

this particular victim than some other fellow or person whom doesn't offer to pay existing debts?" Answering its own rhetorical question, the court found the payment of the district attorney's incurred debt "rather strong evidence of a reasonable possibility that the discretionary *588 function that's fundamental to a District Attorney is compromised and thereby would not necessarily be used in an even-handed manner."

The Court of Appeal reversed the recusal order. First, the appellate court disagreed with the trial court's conclusion Borland's payments created a conflict of interest. The Court of Appeal viewed the payments as "comparable to the cooperation victims often give to prosecutors in criminal cases." Any sense of obligation arising from the payments, the court believed, was necessarily "minimal," and hence insufficient to show the existence of a conflict.

Alternatively, assuming the existence of a conflict, the Court of Appeal found its gravity insufficient to justify recusal. The trial court, the Court of Appeal noted, found only a "reasonable possibility" of unfair treatment, without determining whether, as required under section 1424, the conflict rendered it "unlikely" that defendant would receive fair treatment from the prosecutor. Moreover, to find fair treatment "unlikely" on these facts, the Court of Appeal held, would have exceeded the trial court's discretion.

Discussion

The question raised by this case is whether a crime victim's payment of substantial investigative expenses already incurred by the public prosecutor creates a disabling conflict of interest for the prosecutor, requiring his or her disqualification. Our examination of the question begins with exposition of the general principle that a public prosecutor must be free of special interests that might compete with the obligation to seek justice in an impartial manner (pt. I, post). In part II we focus on the statutory standard for recusal under California law, examining the origins and interpretation of section 1424. Finally, in part III, we apply the statutory standard to the case at bar, consistent with the more general principles explored earlier.

I. The Independence and Impartiality of the District Attorney

(1) In California, all criminal prosecutions are conducted in the name of the People of the State of California and by their authority. (Gov. Code, § 100, subd. (b).) California law does not authorize private prosecutions. Instead, "[t]he prosecution of criminal offenses on behalf of the People is the sole responsibility of the public prosecutor .... [¶] [who] ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek. [Citation.] No private citizen, however personally aggrieved, may institute criminal proceedings independently [citation], and the prosecutor's own discretion is not subject to judicial control *589 at the behest of persons other than the accused." (Dix v. Superior Court (1991) 53 Cal.3d 442, 451 [279 Cal.Rptr. 834, 807 P.2d 1063].)

The district attorney of each county is the public prosecutor, vested with the power to conduct on behalf of the People all prosecutions for public offenses within the county. (Gov. Code, § 26500; Hicks v. Board of Supervisors (1977) 69 Cal.App.3d 228, 240 [138 Cal.Rptr. 101].) Subject to supervision by the Attorney General (Cal. Const., art. V, § 13; Gov. Code, § 12550), therefore, the district attorney of each county independently exercises all the executive branch's discretionary powers in the initiation and conduct of criminal proceedings. (People ex rel. Younger v. Superior Court (1978) 86 Cal.App.3d 180, 203 [150 Cal.Rptr. 156]; People v. Municipal Court (Pellegrino) (1972) 27 Cal.App.3d 193, 199-204 [103 Cal.Rptr. 645, 66 A.L.R.3d 717].) The district attorney's discretionary functions extend from the investigation of and gathering of evidence relating to criminal offenses (Hicks v. Board of Supervisors, supra, 69 Cal.App.3d at p. 241), through the crucial decisions of whom to charge and what charges to bring, to the numerous choices the prosecutor makes at trial regarding "whether to seek, oppose, accept, or challenge judicial actions and rulings." (Dix v. Superior Court, supra, 53 Cal.3d at p. 452; see also People v. Superior Court (Greer) (1977) 19 Cal.3d 255, 267 [137 Cal.Rptr. 476, 561 P.2d 1164] [giving as examples the manner of conducting voir dire examination, the granting of immunity, the use of particular witnesses, the choice of arguments, and the negotiation of plea bargains].)

The importance, to the public as well as to

individuals suspected or accused of crimes, that these discretionary functions be exercised "with the highest degree of integrity and impartiality, and with the appearance thereof" (People v. Superior Court (Greer), supra, 19 Cal.3d at p. 267) cannot easily be overstated. The public prosecutor " 'is the representative not of any ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.' " (Id. at p. 266, quoting Berger v. United States (1935) 295 U.S. 78, 88 [79 L.Ed. 1314, 1321, 55 S.Ct. 629].)

The nature of the impartiality required of the public prosecutor follows from the prosecutor's role as representative of the People as a body, rather than as individuals. "The prosecutor speaks not solely for the victim, or the police, or those who support them, but for all the People. That body of 'The People' includes the defendant and his family and those who care about him. *590 It also includes the vast majority of citizens who know nothing about a particular case, but who give over to the prosecutor the authority to seek a just result in their name." (Corrigan, On Prosecutorial Ethics (1986) 13 Hastings Const.L.Q. 537, 538-539.) Thus the district attorney is expected to exercise his or her discretionary functions in the interests of the People at large, and not under the influence or control of an interested individual. (People v. Superior Court (Greer), supra, 19 Cal.3d at p. 267.)

While the district attorney does have a duty of zealous advocacy, "both the accused and the public have a legitimate expectation that his zeal ... will be born of objective and impartial consideration of each individual case." (People v. Superior Court (Greer), supra, 19 Cal.3d at p. 267.) "Of course, a prosecutor need not be disinterested on the issue whether a prospective defendant has committed the crime with which he is charged. If honestly convinced of the defendant's guilt, the prosecutor is free, indeed obliged, to be deeply interested in urging that view by any fair means. [Citation.] True disinterest on the issue of such a defendant's guilt is the domain of the judge and the jury-not the prosecutor. It is a bit easier to say what a disinterested prosecutor is not than what he is. He is not disinterested if he has, or is under the influence of others who have, an axe to grind against the defendant, as distinguished from the appropriate interest that members of society have in bringing a defendant to justice with respect to the crime with which he is charged." (Wright v. United States (2d Cir. 1984) 732 F.2d 1048, 1056.)

II. Standards for Prosecutorial Recusal Under Section 1424

Section 1424, pursuant to which the present motion was made, was enacted in 1980. Only three years earlier, in People v. Superior Court (Greer), supra, 19 Cal.3d 255 (hereinafter Greer), this court first recognized the judicial power to recuse the district attorney as prosecutor. In Greer, we located the source of a court's disqualification power in Code of Civil Procedure section 128, subdivision (a)(5), which recognizes a court's power " '[t]o control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it ....' " (Greer, supra, 19 Cal.3d at p. 261, fn. 4; accord, People ex rel. Clancy v. Superior Court (1985) 39 Cal.3d 740, 745 [218 Cal.Rptr. 24, 705 P.2d 347]; but see People v. Hamilton (1988) 46 Cal.3d 123, 139 [249 Cal.Rptr. 320, 756 P.2d 1348] [asserting Greer stated "common law principle"].) We further held the separation of powers doctrine did not preclude a trial court from disqualifying a district attorney. (Greer, supra, at pp. 262-265.)

In Greer, we expressed concern not only with actual conflicts of interest that might affect the evenhandedness with which a prosecutor exercised his *591 or her discretionary functions, but also with any " 'appearance of impropriety' " that might adversely affect " 'public ... confidence in the integrity and impartiality of our system of criminal justice.' " (Greer, supra, 19 Cal.3d at p. 268.) We therefore held a district attorney could be disqualified "when [a] judge determines that the attorney suffers from a conflict of interest which might prejudice him against the accused and thereby affect, or appear to affect, his ability to impartially perform the discretionary functions of his office." (Id. at p. 269, fn. omitted; italics added.)

(2) Section 1424 established both procedural and substantive requirements for a motion to disqualify the district attorney. Substantively, the statute provides the following standard: "The motion shall

not be granted unless it is shown by the evidence that a conflict of interest exists such as would render it unlikely that the defendant would receive a fair trial."

"Section 1424 was the Legislature's response to Greer and other criminal cases stressing the importance of the appearance of impropriety and other 'apparent' conflicts as bases for prosecutorial disqualification." (People v. Lopez (1984) 155 Cal.App.3d 813, 824 [202 Cal.Rptr. 333].) The Legislature's response, however, was not as unequivocal as it might have been. As noted in Lopez, the statute refers simply to a "conflict of interest"; it does not explicitly require an "actual" conflict, nor does it explicitly exclude "apparent" conflicts. (Ibid.) On the other hand, the statute allows disqualification only when a conflict "render[s] it unlikely that the defendant would receive a fair trial," (§ 1424) whereas Greer allowed disqualification even when the conflict might merely "appear to affect" the prosecutor's fairness. [FN3]

FN3 An earlier version of the bill adding section 1424 would have required the movant to show "an actual conflict of interest." (Sen. Amend. to Sen. Bill No. 1520 (1979-1980 Reg. Sess.) Apr. 10, 1980.) Before enactment, the language was changed to "a conflict of interest."
At the request of amicus curiae California District Attorneys Association, we take judicial notice of documents from the legislative history of Senate Bill No. 1520, which added section 1424. These documents indicate the bill was drafted and sponsored by the Attorney General in response to Greer; the Attorney General's office sought the measure as a means of reducing the number of disqualifications and thereby alleviating an increase in that office's disqualification workload. (Sen. Com. on Judiciary, Rep. on Sen. Bill No. 1520 (1979-1980 Reg. Sess.) as amended Apr. 10, 1980, pp. 1-3.) The Attorney General, in a letter sent to all members of the Senate before that body's passage of the bill, attributes the increase in disqualifications, in part, to Greer's "'appearance of conflict'" test. (Atty. Gen., letter to members of Sen., May 12, 1980.)

We considered and resolved these interpretive questions regarding section 1424 in People v. Conner, supra, 34 Cal.3d 141 (hereinafter Conner). Recognizing the standard of section 1424 differed from that articulated in Greer, we nonetheless concluded that the statute "contemplates both 'actual' and 'apparent' conflict when the presence of either renders it unlikely that *592 defendant will receive a fair trial." (34 Cal.3d at p. 147.) The distinction between actual and apparent conflict is "less crucial" under the statute, we explained, because of the "additional statutory requirement" that the conflict must "render it unlikely that the defendant would receive a fair trial." (Ibid.) We held that a "conflict," for purposes of section 1424, "exists whenever the circumstances of a case evidence a reasonable possibility that the DA's office may not exercise its discretionary function in an evenhanded manner. Thus, there is no need to determine whether a conflict is 'actual' or only gives an 'appearance' of conflict." (34 Cal.3d at p. 148.) But however the conflict is characterized, it warrants recusal only if "so grave as to render it unlikely that defendant will receive fair treatment during all portions of the criminal proceedings." (Ibid.)

Conner establishes that, whether the prosecutor's conflict is characterized as actual or only apparent, the potential for prejudice to the defendant-the likelihood that the defendant will not receive a fair trial-must be real, not merely apparent, and must rise to the level of a likelihood of unfairness. Thus section 1424, unlike the Greer standard, does not allow disqualification merely because the district attorney's further participation in the prosecution would be unseemly, would appear improper, or would tend to reduce public confidence in the impartiality and integrity of the criminal justice system. (Accord, People v. McPartland (1988) 198 Cal.App.3d 569, 574 [243 Cal.Rptr. 752] ["recusal cannot be warranted solely by how a case may appear to the public"]; People v. Lopez, supra, 155 Cal.App.3d at pp. 827-828.) [FN4]

FN4 People v. Hamilton, supra, 46 Cal.3d 123, is not to the contrary. Our references there to recusal as a means of protecting "public confidence in the integrity and impartiality of the criminal justice system" (id. at p. 141) were in the application of the Greer standard, which had been exclusively applied by the parties and court at Hamilton's trial. (Id. at p. 141, fn. 3.)
One should note, in this connection, the distinction between a motion to recuse the district attorney, under section 1424, and a motion to set aside the information or indictment, under section 995. In Greer we suggested that "if the trial court determines that a district attorney's participation in the filing of a criminal complaint or the preliminary hearing on that complaint created a

> potential for bias or the appearance of a conflict of interest, it may conclude that the defendant was not 'legally committed' within the meaning of Penal Code section 995, and the information should be set aside." (Greer, supra, 19 Cal.3d at p. 263, fn. 5.) We express no opinion here regarding the standard applicable to motions under section 995.

Because the enactment of section 1424 eliminated the appearance of impropriety as an independent ground for prosecutorial disqualification, our review of the recusal order here must focus on whether Borland's payments created a conflict with the actual likelihood of prejudice to Eubanks and Wang, rather than on whether allowing such payments would, as defendants assert, be "unseemly" or create "the perception of improper influence." That our analysis focuses on actual likelihood of prejudice, however, should not *593 be taken as suggesting the potential for loss of public confidence in the criminal justice system is either unimportant or unimaginable. To the contrary, the practice of the district attorney here-soliciting and accepting the victim's underwriting of significant investigative costs-could, especially if replicated on a wide scale, raise an obvious question as to whether the wealth of the victim has an impermissible influence on the administration of justice. A system in which affluent victims, including prosperous corporations, were assured of prompt attention from the district attorney's office, while crimes against the poor went unprosecuted, would neither deserve nor receive the confidence of the public. [FN5] Even the appearance of such impropriety would be highly destructive of public trust. Under section 1424, however, such apprehensions, alone, are no longer a ground for recusal of the district attorney.

> FN5 We do not suggest this is the current situation in Santa Cruz or any other county of California. Indeed, it has been argued that large corporations often have difficulty interesting local prosecutors, whose resources are already strained by the fight against violent crime, in the investigation and prosecution of business fraud and other complicated crimes against corporate victims. (See International Business Machines Corp. v. Brown (C.D.Cal. 1994) 857 F.Supp. 1384, 1388-1389.)

Conner clarified two other points of statutory interpretation important to the present case. First, by its terms, section 1424 allows recusal if the conflict of interest is so grave as to make a "fair trial" unlikely. The prosecutor's discretionary functions, however, are not limited to the trial proper, and we recognized in Conner that the need for prosecutorial impartiality extends to all portions of the proceedings, not only to the trial. Paraphrasing the statutory standard, we asked: "Was this conflict so grave as to render it unlikely that defendant will receive fair treatment during all portions of the criminal proceedings?" (Conner, supra, 34 Cal.3d at p. 148, italics added.) Consistently, in assessing the likelihood of prejudice, we referred to the conflict's effect on "the DA's discretionary powers exercised either before or after trial (e.g., plea bargaining or sentencing recommendations)." (Id. at p. 149, italics added; see also People v. Lopez, supra, 155 Cal.App.3d at p. 822 ["fair trial" in section 1424 broader than "miscarriage of justice" prejudice standard].)

Defendants here have focused on the likelihood of pretrial prejudice, in particular "the very real likelihood that the prosecution would pursue a weak case because it was indebted to Borland." They urge us to uphold the trial court's finding of conflict, which was based upon a perceived reasonable possibility the district attorney, out of a sense of obligation to Borland, would be unwilling to drop the charges or bargain for a lesser plea. Conner established that the potential for such pretrial unfairness is cognizable under section 1424. *594

Second, section 1424 requires the existence of a "conflict ... such as would render" a fair trial "unlikely." In Conner, we read this language as establishing a two-part test: (i) is there a conflict of interest?; and (ii) is the conflict so severe as to disqualify the district attorney from acting? Thus, while a "conflict" exists whenever there is a "reasonable possibility that the DA's office may not exercise its discretionary function in an evenhanded manner," the conflict is disabling only if it is "so grave as to render it unlikely that defendant will receive fair treatment." (Conner, supra, 34 Cal.3d at p. 148.) [FN6] As shall be seen in part III.A., post, the trial court here erred by addressing only the first part of the test, existence of a conflict, without deciding whether the conflict was so grave as to make fair treatment unlikely.

> FN6 The legislative mandate that recusal not be ordered on a mere "possibility" of unfair treatment makes particularly compelling sense where, as here, what is at issue is the disqualification of the district attorney's entire office, rather than only

> one or a few deputies. "[W]hen the entire prosecutorial office of the district attorney is recused and the Attorney General is required to undertake the prosecution or employ a special prosecutor, the district attorney is prevented from carrying out the statutory duties of his elective office and, perhaps even more significantly, the residents of the county are deprived of the services of their [locally] elected representative in the prosecution of crime in the county." (People ex rel. Younger v. Superior Court, supra, 86 Cal.App.3d at p. 204.)

III. Application to This Case

A. Existence of a Conflict of Interest

In Conner, supra, 34 Cal.3d at page 149, we stated the trial court's recusal decision was reviewable only to determine if it was supported by "substantial evidence." In People v. Hamilton, supra, 46 Cal.3d at page 140, we declared the standard was "abuse-of-discretion." (3) To the extent these assertions created any inconsistency, it was resolved in People v. Breaux (1991) 1 Cal.4th 281, 293-294 [3 Cal.Rptr.2d 81, 821 P.2d 585]: "Our role is to determine whether there is substantial evidence to support the [trial court's factual] findings [citing Conners], and, based on those findings, whether the trial court abused its discretion in denying the motion [citing Hamilton]." The same two-part standard applies to review of a trial court's grant ruling.

Although there were some conflicts in the recusal hearing testimony (e.g., Johnson and Leyton differed as to whether Leyton participated in discussion of who would pay Klausner's fee), the significant facts were largely undisputed. The trial court made no explicit findings on questions of evidentiary fact. Our review, then, is limited to determining if the superior court abused its discretion, while assuming the court relied on any substantial evidence that tends to support its ruling. *595

(4) The discretion of a trial court is, of course, " 'subject to the limitations of legal principles governing the subject of its action.' " (Westside Community for Independent Living, Inc. v. Obledo (1983) 33 Cal.3d 348, 355 [188 Cal.Rptr. 873, 657 P.2d 365].) The Attorney General argues at length that financial contributions to the district attorney's office should not, as a matter of law, be considered as creating a conflicting interest for purposes of disqualification, because any interest of the district attorney in such contributions would be an institutional, rather than personal, interest. He emphasizes that Borland's payments "did not benefit any official's personal pocketbook," and contends the case law shows "recusal will usually require a showing of a prosecutor's personal interest in prosecution," or, stated differently, "a showing of personal or emotional involvement" on the part of the district attorney.

The Attorney General fails to persuade us any legal principle restricts the concept of a conflicting interest to a district attorney's personal financial or emotional stake in the prosecution. The cited cases in which recusal has been based on a prosecutor's personal involvement are not authority for a limiting rule. [FN7] As the Court of Appeal in the present case explained, "[p]ersonal interest or emotional involvement will have a particularly strong tendency to imply extraneous motivation. But it does not follow that only evidence of personal interest or emotional involvement will support a conclusion that there is 'a reasonable possibility that the [district attorney's] office may not exercise its discretionary function in an evenhanded manner.' (People v. Conner, supra, 34 Cal.3d at p. 148.)"

> FN7 The majority opinion in People v. Superior Court (Martin) (1979) 98 Cal.App.3d 515, 521-522 [159 Cal.Rptr. 625], a decision predating the enactment of section 1424, could be read as requiring a conflicting personal interest for recusal. The majority in that case, however, also found the defendant's claim of conflict "devoid of substance" (98 Cal.App.3d at p. 520), and Justice Grodin, in his concurring opinion, pointed out that the defendant had not suggested "any plausible scenario for conflict that would operate to his detriment." (Id. at p. 522.)

Section 1424, on its face, allows recusal on a showing of any conflict of interest that renders fair treatment unlikely, and our decisions interpreting the statute have not further restricted the concept of a conflicting interest. No reason is apparent why a public prosecutor's impartiality could not be impaired by institutional interests, as by personal ones. We have recognized the existence of such an impermissible conflict in a scheme that made the official budget of a public defender dependent on litigation decisions that also affected the interests of the defender's clients (People v. Barboza (1981) 29 Cal.3d 375, 380 [173 Cal.Rptr. 458, 627 P.2d

188]); in some circumstances, the same might be true of prosecutors. For example, a scheme that provides monetary rewards to a prosecutorial office might carry the potential *596 impermissibly to skew a prosecutor's exercise of the charging and plea bargaining functions. (Cf. Marshall v. Jerrico, Inc. (1980) 446 U.S. 238, 250 [64 L.Ed.2d 182, 193, 100 S.Ct. 1610] [return of penalties to prosecuting office held permissible, where budgeting system guarantees there is no "realistic possibility" the prosecuting officer will be influenced by "the prospect of institutional gain"].)

More to the present point, a prosecutor may have a conflict if institutional arrangements link the prosecutor too closely to a private party, for example a victim, who in turn has a personal interest in the defendant's prosecution and conviction. As Judge Friendly put it in Wright v. United States, supra, 732 F.2d at page 1056, a prosecutor "is not disinterested if he has, or is under the influence of others who have, an axe to grind against the defendant." (Italics added.) The tie that binds the prosecutor to an interested person may be compelling though it derives from the prosecutor's institutional objectives or obligations. Thus, in Young v. U.S. ex rel. Vuitton et Fils S. A. (1987) 481 U.S. 787 [95 L.Ed.2d 740, 107 S.Ct. 2124], the high court, pursuant to its supervisory authority, forbade a private law firm from prosecuting a contempt on behalf of the Government, because the firm, as a matter of legal ethics, bore the "obligation of undivided loyalty" to its private client, Vuitton, which in turn had a private pecuniary interest in prosecution of the contempt. (Id. at p. 805 [95 L.Ed.2d at p. 757].) A public prosecutor must not be in a position of "attempting at once to serve two masters," the People at large and a private person or entity with its own particular interests in the prosecution. (Ganger v. Peyton (4th Cir. 1967) 379 F.2d 709, 714.) [FN8] Private influence, exercised through control over the prosecutor's personal or institutional concerns, is a conflict of interest, under section 1424, if it creates a reasonable possibility the prosecutor may not act in an evenhanded manner.

FN8 In Ganger, the federal court vacated a Virginia assault conviction on due process grounds because the prosecuting attorney, while prosecuting Ganger criminally, also represented Ganger's wife in a divorce action, which was based on the same alleged assault. A number of cases have followed Ganger in holding due process forbids prosecutors from holding such conflicting interests. (See, e.g., State of N.J. v. Imperiale (D.N.J. 1991) 773 F.Supp. 747, 751-756; People v. Zimmer (1980) 51 N.Y.2d 390 [434 N.Y.S.2d 206, 414 N.E.2d 705, 708]; Cantrell v. Com. (1985) 229 Va. 387 [329 S.E.2d 22, 25-27].) Although defendants cite Ganger and other such cases, and make reference to due process in their brief, they sought recusal solely on the authority of section 1424. Nor do their citations of constitutional authority suggest that a disabling conflict of interest would be more easily shown under constitutional principles than under section 1424. For those reasons, and because we conclude the trial court did not err in finding a conflict under the statutory standard, we need not reach any constitutional question here.

Nor are we persuaded that Borland's contributions bore no potential for cognizable prejudice because, as argued by amicus curiae California District *597 Attorneys Association (CDAA), "[u]nequal treatment of victims, to the extent it exists, is a political necessity created by inadequate tax revenues; and there is no misconduct by the district attorney in reacting to such necessity in the way he deems most beneficial to the community." True, district attorneys must, of necessity, factor budgetary considerations into their exercise of prosecutorial discretion. A district attorney is not disqualified simply because, in an effort to overcome budgetary restraints, he or she has accepted assistance from the public in investigating or prosecuting a crime. At the same time, however, the courts, the public and individual defendants are entitled to rest assured that the public prosecutor's discretionary choices will be unaffected by private interests, and will be "born of objective and impartial consideration of each individual case." (Greer, supra, 19 Cal.3d at p. 267.)

In this connection, CDAA draws our attention to statutes establishing industry-financed funding schemes for certain types of fraud prosecutions. Insurance Code section 1872.8, subdivision (a), assesses automobile insurers up to $1 per insured vehicle per year, and allocates 51 percent of the resulting funds for distribution to district attorneys for investigation and prosecution of automobile insurance fraud cases. Insurance Code section 1872.83 establishes a similar funding scheme for workers' compensation fraud investigation and prosecution. CDAA asserts these statutes serve to demonstrate "it is ... appropriate as a matter of policy to request victims to pay some prosecution

related costs." Without expressing any opinion as to whether these financing schemes may cause a conflict for district attorneys, or as to their desirability from a policy standpoint, we agree with defendants that these statutory schemes are distinguishable in a number of ways from the type of contributions at issue here. The insurers involved in the statutory funding schemes are required by law to contribute to prosecution efforts, unlike Borland, which contributed to the prosecution at the special request of the district attorney's office; the assessments are made industry-wide, rather than on one particular victim corporation, and are spent on investigation and prosecution of automobile and workers' compensation insurance fraud generally, rather than for the particular benefit of any one victim. These factors tend to reduce the likelihood any victim would gain, through financial contributions, influence over the conduct of any particular prosecution.

The Attorney General also maintains Borland's assistance to the district attorney bore no potential for improper influence because it was, in the Court of Appeal's words, "comparable to the cooperation victims often give to prosecutors in criminal cases." We disagree. True, ordinary cooperation with police and prosecutors may impose financial costs on the victim; the need to attend interviews, lineups and court proceedings, for example, may *598 cause an individual complainant to lose earnings or a corporate complainant to lose production. Beyond such routine cooperation, victims of commercial and corporate crimes sometimes assist the prosecution by collecting and organizing necessary information from internal sources, and may even hire private investigators for external investigation of suspected crimes against the company. None of these common practices, however, include the district attorney's solicitation and acceptance of financial assistance to satisfy an already incurred obligation.

(5) In summary, we conclude financial assistance of the sort received here may create a legally cognizable conflict of interest for the prosecutor. The undisputed facts, moreover, support the trial court's conclusion such a conflict did exist in this case. The district attorney incurred a debt of $9,450 to an independent contractor, Strawn, for technical assistance in a criminal investigation. The debt was, as the deputy district attorney who argued the motion conceded, "substantial considering our resources." Certainly the amount is not de minimis. (Cf. State v. Retzlaff (1992) 171 Wis.2d 99 [490 N.W.2d 750, 751-753] [theft victim's $300 campaign contribution to the district attorney did not require the district attorney's disqualification from prosecution of the alleged thief].) The district attorney then asked the victim of the alleged crime, Borland, to pay the debt. Borland did so, paying as well other significant costs of the investigation. The trial court did not err in concluding these circumstances evidenced a "reasonable possibility" the prosecutor might not exercise his discretionary functions in an evenhanded manner.

We must agree, however, with the Court of Appeal that the trial court failed to apply the second part of the Connor test for disqualification: whether the conflict is so grave as to make fair treatment of the defendant unlikely if the district attorney is not recused. In the absence of contrary evidence, we assume a trial court applied the correct legal standard. (Ross v. Superior Court (1977) 19 Cal.3d 899, 913-914 [141 Cal.Rptr. 133, 569 P.2d 727].) Here, however, there is ample evidence the trial court failed to apply the complete test under section 1424. The court's oral remarks at the recusal hearing, which are the only record of the court's reasoning, are directed solely at the first portion of the two-part test established by section 1424 and Conner. The court repeatedly stated the standard as a "reasonable possibility" of unfairness to defendants-Conner's definition of a conflict- and nowhere addressed whether the conflict was so grave as to render fair treatment unlikely. The trial court thus determined only that, under the test enunciated in Connor, the Santa Cruz County District Attorney suffered from a conflict of interest in his prosecution of Eubanks and Wang, and never addressed whether that conflict was, under the proper standard, disabling. We proceed to consider whether, as the Court of Appeal held, a *599 finding of disabling conflict would, on this record, be an abuse of discretion under the standard established by section 1424.

B. Gravity of the Conflict

As previously explained, the trial court detected a potential for unfair treatment in the possible sense of obligation the district attorney would feel for Borland's payment of a debt owed by the district attorney's office. The court elaborated on the potential prejudice as follows: "[L]et's assume that the District Attorney's office, in the review of their case ... ultimately conclude that, 'Well, you know,

maybe our case isn't as strong as we thought at the inception.' Would they be-would it be easier for them to tell a victim who paid no money to the D.A.'s office, 'You don't have a case,' than it would be one that you received $15,000 [sic] from?"

The trial court correctly focused on the potential bias arising out of a sense of obligation to Borland, rather than on any potential "prejudice" to be found in the fact of investigatory assistance itself. That the prosecutor may have been able to proceed further or more quickly against defendants with Borland's assistance than without would not, by itself, constitute unfair treatment. As CDAA points out, defendants have "no right to expect that crimes should go unpunished for lack of public funds." (See Wright v. United States, supra, 732 F.2d at p. 1057 [prejudice from asserted prosecutorial bias not shown by hypothesis that, if a different prosecutor had been appointed, the defendant "might not have been indicted for a crime which, as the jury's verdict demonstrates, he had in fact committed."].) For that reason we cannot agree with the suggestion of amicus curiae National Association of Criminal Defense Lawyers that a victim's financial assistance necessarily subjects the defendant to unfair prosecutorial treatment because "[w]hen a private party underwrites the cost of one particular prosecution, that case is not subject to the same economic restraints that limit all other prosecutions." To warrant recusal of the district attorney under section 1424, instead, the evidence must show the prosecutor suffers from a disabling conflict of interest. Such a conflict is demonstrated, in this factual context, only by a showing the private financial contributions are of a nature and magnitude likely to put the prosecutor's discretionary decisionmaking within the influence or control of an interested party. In each case, the trial court must consider the entire complex of facts surrounding the conflict to determine whether the conflict makes fair and impartial treatment of the defendant unlikely.

(6) Supporting recusal here is the fact the largest payment, that for Strawn's first $9,450 bill, was, as the trial court emphasized, "payment of *600 money for a debt already incurred" by the district attorney. The final decision to obtain payment from Borland was not made until Strawn submitted his first bill. Because Strawn had contracted with the district attorney's office, rather than Borland, Chief Inspector Johnson reasonably believed the district attorney's office would be responsible for Strawn's bills if Borland did not pay them. Borland paid Strawn's bill, moreover, in response to a direct request from the district attorney's office. While decisions from other jurisdictions have approved of some forms of victim assistance, for example in the form of an attorney hired by a victim or victim's family to assist the public prosecutor (see, e.g., Powers v. Hauck (5th Cir. 1968) 399 F.2d 322, 324; Rutledge v. State (1980) 245 Ga. 768 [267 S.E.2d 199, 200]; State v. Riser (1982) 170 W.Va 473 [294 S.E.2d 461, 464]), none involved the public prosecutor's request for the victim's assistance to satisfy a monetary debt already incurred. Hence, none assist our analysis here.

The size of the contributions here also tends to show recusal would be within the trial court's discretion. District Attorney Danner testified his office fund for this type of investigation was very limited, and Chief Inspector Johnson apparently regarded the investigatory costs here as large enough to warrant the unusual measure of asking the victim to pay them.

Finally, the trial court's assessment of the strength of the prosecution case supports the decision to recuse. Before hearing the recusal motion, the court held an extensive hearing on the proper means of protecting Borland's asserted trade secrets from disclosure during the criminal proceedings. (See Evid. Code, § § 1060-1063.) In the course of that hearing, the court repeatedly stated its firm impression that the subject secrets, which Wang and Eubanks were alleged to have conspired to steal, Wang to have stolen and Eubanks to have received, do not in fact meet the definition of trade secrets for criminal purposes (Pen. Code, § 499c, subd. (a)(9)), although they might be trade secrets for purposes of civil remedies (Civ. Code, § 3426.1, subd. (d)). [FN9] Arguably, a factually weak case is more subject than a strong case to influence by extraneous financial considerations, since in the absence of financial assistance from the victim the prosecutor is more likely to abandon or plea bargain such a case.

FN9 The Attorney General observes, correctly, that the trial court's comments "are not evidence of weakness in the case." We do not suggest they are, and express no view as to the actual strength or weakness of the prosecution case. The trial court's comments are significant only in that they tend to show that court's own preliminary assessment of the case, an assessment the court may properly take

into account in making its discretionary decision on recusal.

Considering the above factors, we cannot say, as a matter of law, that had the trial court addressed the second part of the Conner test-the gravity of *601 the identified conflict-it would have abused its discretion in finding the conflict so grave as to render fair treatment of the defendants in all stages of the criminal proceedings unlikely. The Court of Appeal therefore erred in holding that, assuming a conflict existed, it was not, as a matter of law, grave enough to justify recusal.

Disposition

The cause is transferred to the Court of Appeal with directions to vacate its previous judgment and dismiss the appeal as moot.

George, C. J., Mosk, J., Kennard, J., Baxter, J., Chin, J., and Brown, J., concurred.

GEORGE, C. J.

, Concurring.-I have signed the majority opinion, and write separately simply to explain that, on these facts, I believe-apart from any general concerns I may have about privately funded public prosecutions -recusal of the district attorney's office was required as a matter of law.

As the majority holds, the trial court correctly found that the prosecutor suffered a "conflict of interest" under Penal Code section 1424-i.e., there was "a reasonable possibility that the [district attorney's] office may not exercise its discretionary function in an evenhanded manner" (People v. Conner (1983) 34 Cal.3d 141, 148 [193 Cal.Rptr. 148, 666 P.2d 5] [construing Pen. Code, § 1424].) The majority then addresses the remaining question-whether recusal of the district attorney's office was required because the conflict made it "unlikely that the defendant would receive a fair trial." (Pen. Code, § 1424.)

As this court said in Conner, determination of that question calls for an inquiry as to whether the conflict is "so grave as to render it unlikely that defendant will receive fair treatment during all portions of the criminal proceedings." (People v. Conner, supra, 34 Cal.3d at p. 148, italics added.) The majority concludes, correctly, that on these facts the trial court would not have abused its discretion had it concluded that fair treatment of defendants was unlikely. I would stress that under the circumstances here presented, the trial court properly could not have exercised its discretion otherwise.

I

As the majority acknowledges, the relevant facts are as follows: (i) The district attorney solicited the alleged crime victim to pay approximately *602 $13,000 incurred by the district attorney's office in connection with that office's investigation of the case; (ii) a deputy district attorney testified that the debt owed by the office was "substantial" in view of the office's limited resources; and (iii) the trial court assessed the evidentiary support for the criminal trade secret charges against defendants as extremely weak. Certainly, as the majority concludes, all three circumstances "support" recusal under Penal Code section 1424. As explained below, and contrary to the arguments advanced by the Attorney General on behalf of the district attorney, and relied upon by the Court of Appeal herein, these circumstances also mandate recusal under the statute.

First, the circumstance that the district attorney solicited Borland International to pay the debt incurred by the district attorney rendered it problematic, if not unlikely, that the district attorney would be able to exercise objectively his prosecutorial discretion. As the trial court observed, it would be quite difficult for the district attorney to tell Borland that he has decided not to prosecute Borland's case, after Borland, at the district attorney's request, agreed to pay substantial bills that were submitted to, and that were the responsibility of, the district attorney's office. Accordingly, this was not, as the Attorney General asserts, merely an example of normal "cooperation by a victim corporation." Instead, the solicited contributions here at issue are of a different order and pose a far greater risk of improperly influencing the district attorney's exercise of charging and prosecuting discretion.

Second, as the majority acknowledges, the size of the solicited contributions increased the likelihood that defendants would not receive fair treatment. The district attorney testified that the office fund for this type of investigation was very limited, and the

chief inspector "apparently regarded the investigatory costs here as large enough to warrant the unusual measure of asking the victim to pay them." (Maj. opn., ante, at p. 600.) As was conceded by the deputy district attorney who argued the recusal motion, "[t]he sum of money that Borland paid in the [district attorney] universe is substantial considering our resources."

Certainly, the district attorney would have appreciated that Borland stood to benefit from the criminal prosecution of defendants. Not only would such a prosecution assist Borland's parallel civil action, help protect any asserted trade secrets, and serve to deter others from committing similar acts in the future, but prosecution also would constitute a major disruption and distraction for Symantec Corporation, one of Borland's primary competitors. Under these circumstances, the solicited funds likely would be considered by Borland to be a prudent investment whether or not the prosecution ultimately was pursued to trial and conviction because, by keeping the prosecution *603 "alive a little longer," Borland would benefit competitively vis-a-vis Symantec. Thus, the district attorney could "reimburse" Borland for paying the incurred debt simply by exercising discretion to continue or extend the criminal investigation for longer than it otherwise would. As the opinion observes (maj. opn., ante, at p. 584, fn. 2), the district attorney maintained the charges against defendants until shortly after oral argument in this court, despite the apparent weakness of the case.

Under these circumstances, the district attorney-knowing the strategic importance of the matter to Borland, and having asked Borland to pay the district attorney's obligations-likely would feel a great sense of obligation to pursue the prosecution and would be reluctant to exercise objectively his prosecutorial discretion. This further increased the risk that defendants would not receive the fair, impartial treatment that other defendants would obtain in a similar situation.

The Court of Appeal concluded otherwise, reasoning that an amount of money significant to a tightly budgeted public office is not necessarily large in the eyes of a successful for-profit corporation, and that, as the deputy district attorney arguing the motion put it, "the sum of money that Borland paid in the Borland universe is not great." Even if true, the district attorney's observation is of debatable relevance. The question is whether the size of the solicited contributions was sufficient to create a likelihood of unfairness to defendants arising from the alleged victim's undue influence on the district attorney's discretionary authority. It matters little that the $13,000 solicited funds might be "small potatoes" in Borland's eyes; the issue is the likely influence of such a payment upon the financially strapped public prosecutor in his treatment of the criminal investigation and continued prosecution of defendants.

Finally, as alluded to by the majority, the trial court made clear its "firm impression that the subject secrets ... do not in fact meet the definition of trade secrets for criminal purposes [citation], although they might be trade secrets for purposes of civil remedies [citation]." (Maj. opn., ante, at p. 600.) On the final two days of an eight-day pretrial hearing on Borland's request for a trade-secret protective order (Evid. Code, § 1061), the trial court asserted: "I don't have criminal trade secrets here in my opinion at all, and-from what I've seen, ... I'm not sure why this case is here." Later, the court stated, "I don't see criminal trade secrets here." Finally, the court repeated, "it's this Court's view that there's not a criminal trade secret involved. And there isn't, gentlemen. I still say it to you. I don't know what we're doing here ...."

As the majority observes (maj. opn., ante, at p. 600, fn. 9), the trial court's statements reflect clearly the trial court's considered assessment that the *604 prosecution's case was factually weak. (See also maj. opn., ante, at p. 600.) Contrary to the Attorney General's suggestions, it is appropriate for an appellate court to take into account the trial court's assessment that the prosecution's case is weak, in determining whether the trial court would have abused its discretion had it denied the recusal motion.

II

I agree with the majority that the trial court would not have erred had it properly applied Penal Code section 1424 and granted defendants' recusal motion. Indeed, the trial court would have erred had it ruled otherwise. In light of (i) the circumstance that the contributions were solicited to satisfy obligations of the district attorney, (ii) the size of the contributions in relation to the budget of the district attorney's office, and (iii) the trial court's clearly

expressed and considered assessment that the prosecution's case was weak, I conclude that the trial court would have abused its discretion had it denied the motion to recuse.

Mosk, J., concurred.

Cal. 1996.

People v. Eubanks

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EXHIBIT E

ASSEMBLY CRIMINAL LAW AND
PUBLIC SAFETY COMMITTEE

BYRON D. SHER, CHAIRMAN

STATE CAPITOL, ROOM 2136
(916) 445-3268

BILL NO: AB 2760

FISCAL: YES

URGENCY: NO

HEARING
DATE: 4/4/84

BILL NO: AB 2760 (As Introduced 2/7/84)

AUTHOR: AREIAS

SUBJECT: SHOULD PROCEDURAL CHANGES BE MADE IN STATUTES AUTHORIZING EXTENSIONS OF CALIFORNIA YOUTH AUTHORITY JURISDICTION TO CONFORM TO JUDICIAL DECISIONS?

DIGEST:

Current law provides for two year extensions of California Youth Authority (CYA) jurisdiction over a ward if by reason of mental or physical abnormality the ward would be dangerous to the public if released. The statute now requires only that three-fourths of the members of the jury agree by a preponderance of evidence that the ward is dangerous. Court decisions have held that due process requires a unanimous jury verdict beyond a reasonable doubt. This bill codifies these procedural requirements. The bill also requires the local prosecuting attorney to inform the Youthful Offender Parole Board of a decision not to prosecute the case and makes other technical changes.

STAFF COMMENTS:

1. Purpose. The purpose of the bill is to codify judicially mandated due process safeguards in the statute to insure that extension proceedings are conducted properly. (See People v. Superior Court (Vernal D.) 142 Cal. App. 3d 29.) CYA reports that there are about 12 such cases each year. This is a rather rare proceeding and it can't be assumed most prosecutors are familiar with it. Therefore, it is important to correct the statutes which currently inaccurately reflect what procedural safeguards are necessary.

2. Technical Changes. The bill makes other technical changes which reflect current practice. Currently, the statute states that the Youthful Offender Parole Board (YOPB) shall make application to the court for extension. In practice, however, the YOPB requests the local prosecutor to prosecute the case. To the extent the bill merely reflects current practice, Section 5 of the bill dealing with local reimbursement could be deleted.

. Notification. The requirement that the local prosecutor promptly notify the YOPB of a decision not to prosecute is designed to give the YOPB an opportunity to ask the Attorney General to prosecute before the time for prosecution runs out.

SOURCE: Assembly Member Areias

SUPPORT: None on File.

OPPOSITION: None on File.

CONSULTANT: GEOFFREY A. GOODMAN AB 2760

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EXHIBIT F

BILL ANALYSIS — YOUTH AND ADULT CORRECTIONAL AGENCY

DEPARTMENT	AUTHOR	BILL NO.
Youth Authority	Areias	AB 2760
SOKED BY	**RELATED BILLS**	**DATE LAST AMENDED**
Author	None	Original

BILL SUMMARY

The bill shifts the cost of YA commitment extension proceedings from the counties to the state. It authorizes the prosecuting attorney to petition the committing court for an extension order. The bill also requires a unanimous jury verdict, with proof beyond a resonable doubt.

BACKGROUND

Support and opposition: Currently unknown.

SPECIFIC FINDINGS

Under current law, the Youthful Offender Parole Board may apply to the committing court for an order extending the period of control over a YA ward for two years (1800 W&IC). An extension may be granted upon a finding that a ward is physically dangerous to the public due to a physical or mental deficiency, disorder, or abnormality. In practice, the District Attorney is asked to petition the court on behalf of the Board. By appellate court decision, the ward is entitled to a verdict by a unanimous jury and to proof beyond a reasonable doubt. People v. Superior Court (Vernal D.) (1983) 142 CA3d 29.

DISCUSSION

The bill clarifies the appropriate agency to prosecute such actions on behalf of the Board. In the past, counties have suggested that the Attorney General's office bring these actions, but the AG has declined, maintaining that it was a local responsibility. The bill also makes it clear that the prosecuting attorney may, in his discretion, decline to file a petition for extension requested by the Board. The bill codifies the ruling of the appellate court requiring a unanimous jury verdict. These two changes do little more than reflect current law and practice.

The most significant aspect of the bill is that the cost of 1800 actions would be shifted from the counties to the state. The bill provides that the pursuit of 1800 actions would be a state-mandated local program, subject to reimbursement to local entities per the normal processes. No funds are appropriated for such reimbursements. This would

CONTINUED

POSITION	FINAL SIGNED ON	Governor's Office Use
NEUTRAL		Position noted
Prepared by		Position approved
		Position disapproved
James Rowland, Director 6/445-2561	DATE 3/2/84	AGENCY SECRETARY DATE STEPHEN BLANKENSHIP

re a significant change from current law, in that the 1800 process predates by several years the concept of reimbursement for state mandated local programs and has not been so regarded before. Rather, an 1800 action has simply been seen as a continuation of the original criminal or juvenile case.

Currently, 1800 actions are brought infrequently for several reasons. Dangerous wards often commit violent behavior and are referred to the local district attorney for prosecution, in which case an 1800 action is not necessary. They are also difficult cases to prosecute due to the problems involved in defining physical and mental disability and dangerousness. Section 1800 actions generally do not exceed an average of 1-2 per month statewide. However, individual cases, if vigorously litigated, could take an extended period of time and be quite expensive. As this expense is currently being covered by the counties of commitment, the Youth Authority has no precise data regarding such costs. An appropriate minimal annual cost in the $50,000 to $100,000 range is a reasonable estimate.

Fiscal Impact

$50,000 to $100,000 annually to the State.

EXHIBIT G

Date of Hearing: June 23, 1998
Chief Counsel: Judith M. Garvey

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Don Perata, Chair

SB 2187 (Schiff) - As Amended: April 28, 1998

SUMMARY : Recasts, clarifies and revises the current law concerning the civil commitment of California Youth Authority wards (CYA) beyond the age of 25. Specifically, this bill repeals a redundant hearing procedure to determine whether to proceed with a commitment hearing to determine if a minor shall be held within the CYA past age 25.

EXISTING LAW :

1) Welfare and Institutions Code (WIC) Section provides that:

   a) The Juvenile Court may retain jurisdiction over any person found to be a ward or dependent child of the juvenile court until the ward or dependent child attains the age of 21 years, except as noted in Existing Law provisions 1(b), 1(c) and 1(d). (WIC Section 607(a).)

   b) The Juvenile Court may retain jurisdiction over any person found to be a ward based upon the commission of a criminal offense which is serious or violent until that person attains the age of 25 years if the person was committed to the CYA. (WIC Section 607(b).)

   c) The Juvenile Court may not discharge any person from its jurisdiction who has been committed to the CYA so long as the person remains under the jurisdiction of the CYA, including periods of extended control ordered pursuant to a WIC Section 1800 commitment. (WIC Section 607(c).)

   d) The court may retain jurisdiction over a ward adjudicated a ward for the commission of a serious or violent offense who has been confined in a state hospital or other appropriate public or private mental health facility pursuant until that person has attained the age of 25 years, unless the court which committed the person finds, after notice and hearing, that the person's sanity has been restored. (WIC Section 607(d).)

   e) As an implied exception to WIC Section 607(a), the Juvenile Court may retain jurisdiction during the pendency of an arrest warrant.

2) WIC Section 1769 provides that the CYA has jurisdiction over wards remanded to it from the Juvenile Court until the following ages:

   a) Until the ward attains the age of 21 years.

b) Until the ward attains age 25 if the minor was adjudicated a ward for the commission of specified serious and violent offenses.

c) A ward may be confined in CYA past age 25 if an order for further detention is made pursuant to WIC Section 1800 procedures.

3) WIC Section 1770 provides that any ward committed to CYA for any misdemeanor shall be discharged from CYA at the expiration of a two-year period or attains the age of 23, whichever is sooner. (The age 23 provision was declared invalid in People v. Olivas (1976) 17 Cal.3d 236 as were other portions of the WIC CYA commitment scheme.) However, the period of confinement for misdemeanants validly committed to CYA may be continued for further detention is made pursuant to WIC Section 1800 procedures.

4) WIC Section 1800 provides that whenever the Youthful Offender Parole Board (YOPB) determines that the discharge of a person from CYA control would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality, the YOPB must request the prosecuting attorney to petition the committing court for an order directing that the person remain subject to the control of the authority beyond that time.

5) WIC Section 1800 further provides that if the prosecuting attorney does not file the petition for continued detention, he or she shall notify the YOPB. The effect of not filing a petition is that the ward is released at age 25.

6) WIC Section 1801 provides that upon a petition being filed by the prosecuting attorney, the court must notify the subject of the petition and others, as specified, and "afford the person an opportunity to appear in court with the aid of counsel and of process to compel attendance of witnesses and production of evidence."

7) WIC Section 1801 further provides:

a) If after a full hearing, the court and proof beyond a reasonable doubt is of the opinion that discharge of the person would be physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality, the court must order the CYA to continue the treatment of the person.

b) If the court is of the opinion that discharge of the person from continued control of the CYA would not be physically dangerous to the public, the court must order the person to be discharged from control of the CYA.

8) As revised in 1984, WIC Section 1801.5 provides that if the

□

court orders continued confinement, the ward is then allowed a jury trial with a unanimous verdict and proof beyond a reasonable doubt to answer the question, "Is the person physically dangerous to the public because of his mental or physical deficiency, disorder, or abnormality?"

9) WIC Section 1800 commitments are for a duration of up to two years. (WIC Section 1802.)

COMMENTS

1) Purpose . According to the author, "The maximum age at which a juvenile can be kept in the juvenile justice system is upon reaching the age of 25. Yet, often a juvenile, who has done his or her time and remains a serious threat to society due to a psychological problem, may be released back into the community with no supervision.... It is ridiculous to set walking time bombs out into the community, knowing that they could blow up at any time. Apart from the most critical issue, that of public safety, it is unfair to the person released. Clearly, they would be better served by remaining in a secure treatment facility rather than being put into a position to get into more trouble.

"Some of the problems have resulted from individual courts applying different standards of proof in the initial hearing. SB 2187 clarifies the standard to be applied by making it consistent with other similar mental health related proceedings. By clarifying the use of a preponderance standard in the initial hearing, it makes it easier to get these cases to subsequently be heard by a jury."

2) History of WIC Section 1801 Commitment Hearings .

a) Overview: The age 25 Issue . Under the Juvenile Court Law, a wardship generally ceases at age 21. However, if a minor is sent to CYA for crimes of violence, he or she may be held in custody until he or she reaches 25 years of age. This age 25 release date has no general exceptions. The age 25 issue permeates most discussions of the lack of incapacitation in juvenile proceedings.

b) WIC Section 1800 conditions and procedures . In 1963, in recognition that the release of persons at age 25 might threaten public safety, WIC Section 1800, et seq., allows civil commitment of dangerously disordered youthful offenders who may be treated. In essence, WIC Section 1800 procedures provide for a civil commitment procedure.

In In re Gary W. , (1971) 5 Cal.3d 296, the California Supreme Court noted that it had repeatedly upheld civil commitment schemes provided various conditions were met

from a procedural due process perspective. Moreover, as a constitutionally guaranteed right, the detainee/committee must receive treatment for his or her problems as a condition of the confinement. Specifically,

the Supreme Court noted:

> As we have noted, the Youth Authority is under an affirmative obligation to provide treatment for the ward's mental or physical abnormality when he is committed pursuant to those sections. Detention of such wards without treatment is unauthorized by statute. Accordingly, any person confined pursuant to a section 1800 commitment but who is not receiving treatment may seek his release through appropriate habeas corpus procedures. (citations omitted.) 5 Cal.3d at 303.

c) Post-Gary W. case law . In 1975, the California Supreme Court held that in civil commitment proceedings, there must be unanimous jury verdicts and the standard of proof required for continued detention was proof beyond a reasonable doubt. People v. Burnick , (1975) 14 Cal.3d 306, 322. At the time Burnick was decided, WIC Section 1800 did not require proof beyond a reasonable doubt nor did it require jury unanimity.

d) Vernal D . In 1983, the Court of Appeal upheld the WIC Section 1800 concept from constitutional attack but wrote into the WIC Section 1800 provisions various due process protections. People v. Superior Court (Vernal D.) , (1983) 142 Cal.App.3d 29.

In Vernal D. , a minor subjected to WIC Section 1800 confinement challenged the same on several grounds. He convinced the Superior Court held that this contention had merit based on Olivas , supra . The People then sought a writ of mandate in the Court of Appeal to compel the Superior Court to conduct a WIC Section 1800 hearing.

In the Court of Appeal, Vernal argued that the Superior Court's ruling was correct in holding the WIC Section 1800 procedures invalid in toto. The Court of Appeal disagreed and noted that Olivas , supra . simply held that a ward could not be confined in CYA for any period of time longer than an adult counterpart sentenced to county jail or state prison for the same offense. Vernal D. noted Olivas , supra . had no effect on civil commitment proceedings.

The Court of Appeal further noted in cases subsequent to Olivas , supra . specifically in both In re Moye , (19878) 22 Cal.3d 457, 465 and Conservatorship of Hofferber , (1980) 28 Cal.3d 161, 172, the California Supreme Court had upheld the validity of extended civil commitment proceedings

provided due process procedures were met. Indeed, both Moye and Hofferber referred to WIC Section 1800 procedures as civil commitment proceedings.

However, the Court in Vernal D. did note that the ward had a valid point in that the WIC Section 1800 procedures did

not comport with Burnick as the governing procedures in WIC Section 1800 did not require jury unanimity and WIC Section 1801 language was "murky" on the standard of proof being beyond a reasonable doubt. Therefore, the Court of Appeal followed Burnick in the context of WIC Section 1800 commitments and issued the writ to compel that a WIC Section 1800 hearing be held conditioned on continued confinement based on jury unanimity and proof beyond a reasonable doubt.

e) AB 2760: the legislative response to Vernal D. In 1984, the Legislature enacted AB 2760 (Areias), Chapter 546, Statutes of 1984, and amended various WIC Section 1800 related sections to conform to Vernal D. 's requirements.

As such, WIC Section 1800, et seq., contains a constitutionally viable - if cumbersome - mechanism for extending confinement for two years beyond the time a ward would otherwise have to be released. The basis for the extension is the determination that a ward would be physically dangerous to the public because of a mental or physical deficiency, disorder, or abnormality.

Post -AB 2760, wards were entitled to two separate hearings on whether they are physically dangerous. Within 10 days from a judicial finding of dangerousness, wards may file a written demand for a jury trial in a superior court. The jury is charged to decide whether the person is physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality. The ward is entitled to all rights guaranteed under the federal and state constitutions in criminal proceedings, and the trial requires a unanimous jury verdict, employing the standard of proof beyond a reasonable doubt. The continued confinement pursuant to this process can occur every two years.

f) Problems created by AB 2760 . Because appropriate conforming and cross-referencing changes were not made, AB 2760 in essence required proof beyond a reasonable doubt at both a preliminary hearing (probable cause hearing to proceed to a trial) and at the trial itself. In every other context, all that is required to hold the committee/detainee for trial is probable cause, determined by a court alone in a preliminary hearing type proceeding.

As such, AB 2760 created a situation unheard of in all other contexts of current law : (1) proof beyond a

reasonable doubt to proceed past a preliminary hearing (which normally requires simple probable cause) and (2) a subsequent jury trial using the identical proof beyond a reasonable doubt.

As the sponsor notes, AB 2760 created entirely redundant and unnecessary hearings not mandated by either state or federal guarantees of due process. Specifically, the

sponsor notes:

> A disjointed series of amendments and judicial interpretations has caused these provisions to evolve in such a way as to require an unparalleled redundancy by which a defendant is now, arguably, entitled to two consecutive trials at which the people must twice establish the same elements beyond a reasonable doubt.

5) Corrections to Section WIC 1800 Procedures . This bill corrects essentially all problems created by AB 2760 and assures that WIC Section 1800 will work in an efficient, fair, and constitutional manner so that wards may receive the treatment they need. Specifically, this bill:

a) Requires a court to order a hearing be held if it determines that a commitment petition, on its face, supports a finding of probable cause.

b) Retains the notification provisions in current law.

c) Allows, if the dependent is a minor, a guardian of that minor to appear at the hearing with the aid of counsel and the right to cross-examine experts or witnesses, as specified.

d) Requires the probable cause hearing to be held within 10 calendar days after the date the order is issued unless the person named in the petition waives this time.

e) Requires the court, at the probable cause hearing, to receive evidence and "determine whether there is probable cause to believe that discharge of the person would be physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality."

f) Retains the requirement in current law that if the court determines there is not probable cause, to dismiss the petition and the person shall be discharged from the control of the authority at the time required by current law.

g) Requires that if the court determines there is probable cause to "order that a trial be conducted to determine whether the person is physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality."

h) Provides that, if a trial is ordered, the trial must be by jury unless personally waived by the person, after he or she has been fully advised of the constitutional rights being waived and by the prosecuting attorney, in which case trial shall be by the court.

i) Requires the court or the jury to answer the following question: "Is the person physically dangerous to the public because of his mental or physical deficiency, disorder, or

abnormality?"

j) Statutorily mandates that the the person shall be entitled to all rights guaranteed under the federal and state constitutions in criminal proceedings.

k) Requires in statute a unanimous jury verdict.

l) Requires proof beyond a reasonable doubt.

6) This bill is analogous to procedures for other civil commitments. As noted above, civil commitment procedures for treatment of dangerous individuals is not new in California. For example, since 1986 there has been a civil commitment scheme for mentally disordered offenders (MDOs) and since 1996 for sexually violent predators (SVPs). This bill's provisions are modeled on, and are analogous to, procedures used for MDOs and SVPs. Both these statutes have been upheld against state and federal due process clause attacks.

7) Suggested Technical Amendment to WIC Sections 606 and 607 for Consideration if There is no Opposition.

a) WIC Section 606 and AB 1392. Earlier this year, this Committee approved AB 1392 (Scott), which amended WIC Section 606 to conform with various pieces of legislation enacted in 1994. AB 1392 made a necessary change to implement juvenile court provisions allowing new charges to be filed in adult court after a minor has already been found unfit for juvenile court and other conditions have been met.

One statute allows the filing of new charges in adult court after the minor has been found unfit in a prior proceeding and upon different conduct than which underlies the new charges. Another statute appears to require a juvenile court order to allow the filing of new charges in adult court. AB 1392 reconciled these provisions so as to dispense with an unnecessary juvenile court action.

While AB 1392 passed the Assembly, the Senate never assigned AB 1392 (AB 1392 may have been viewed as a "spot bill" which it was not). AB 1392 was subsequently gutted and used for other purposes. However, the WIC Section 606

cross-referencing issue still remains unaddressed.

As this bill deals with unnecessary and duplicative procedures, should not AB 1392's "cleanup provisions" be included in this bill? (Such an amendment is attached.) A cross-reference check has discerned no chaptering issue by the insertion of the WIC Section 606 change in this bill.

b) WIC Section 607 and SB 2341 failure to cross-reference. In drafting the analysis, staff noticed that WIC Section 607(a) does not specifically state that the Juvenile Court retains jurisdiction

□

during the pendency of an arrest warrant.

WIC Section 607(e), enacted by SB 2341 (Lockyer), Chapter 713, Statutes of 1988, states that the court does but there is not a specific cross-reference to that effect. Should this bill include an amendment to WIC Section 607(a) inserting a specific cross-reference to subdivision (e)? (An amendment is attached analysis.)

Staff has conducted a cross-reference check and it appears that this creates no chaptering issue.

REGISTERED SUPPORT/OPPOSITION :

Support

Los Angeles District Attorney's Office (source)
Attorney General
California District Attorney's Office
California Peace officers Association
California Police Chiefs Association

Opposition

None on File

Analysis prepared by : Judith M. Garvey / apubs / (916) 319-3744

EXHIBIT "A" - SB 2187 AMENDMENTS

At page 2, delete line 1 and insert:

SECTION 1. Section 606 of the Welfare and Institutions Code is amended to read:

606. When a petition has been filed in a juvenile court, the minor who is the subject of the petition shall not thereafter be subject to criminal prosecution based on the facts giving rise to the petition unless the juvenile court finds that the minor is not a fit and proper subject to be dealt with under this chapter and orders that criminal proceedings be resumed

or instituted against him or her ... or the petition is transferred to a court of criminal jurisdiction pursuant to subdivision (b) of Section 707.01 .

SEC. 1.1. Section 607 of the Welfare and Institutions Code is amended to read:

607. (a) The court may retain jurisdiction over any person who is found to be a ward or dependent child of the juvenile court until the ward or dependent child attains the age of 21 years, except as provided in subdivisions (b), (c), ~~and~~ (d), and (e) .

(b) The court may retain jurisdiction over any person who is found to be a person described in Section 602 by reason of

the commission of any of the offenses listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 until that person attains the age of 25 years if the person was committed to the Department of the Youth Authority.

(c) The court shall not discharge any person from its jurisdiction who has been committed to the Department of the Youth Authority so long as the person remains under the jurisdiction of the Department of the Youth Authority, including periods of extended control ordered pursuant to Section 1800.

(d) The court may retain jurisdiction over any person described in Section 602 by reason of the commission of any of the offenses listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 who has been confined in a state hospital or other appropriate public or private mental health facility pursuant to Section 702.3 until that person has attained the age of 25 years, unless the court which committed the person finds, after notice and hearing, that the person's sanity has been restored.

(e) The court may retain jurisdiction over any person while that person is the subject of a warrant for arrest issued pursuant to Section 663.

SEC. 1.5. Section 1801 of the Welfare and

Court of Appeal, Fourth District, Division 2, California.

PEOPLE ex rel. Dennis KOTTMEIER, District Attorney of San Bernardino County, Petitioner,
v.
MUNICIPAL COURT of the STATE of California for the County of San Bernardino, Respondent.
James J. CHARLES, Jr., Dominic M. Davis, Anne M. Cordaro, and Jaime Giron, Real Party in Interest.

No. E007729.

April 20, 1990.

County district attorney brought original proceeding seeking writs of mandate and prohibition to require municipal court to rescind requirement that district attorney's representative prosecute every traffic infraction case. The Court of Appeal, Hollenhorst, Acting P.J., held that: (1) district attorney had discretion to decline to prosecute traffic infraction cases, and (2) municipal court could not decline to hear such cases.

Writ of mandate issued.

West Headnotes

[1] Double Jeopardy ⚿101
135Hk101

Double jeopardy clause did not prevent retrial of defendants in traffic infraction cases who had been found not guilty by judge who had prohibited state witnesses from testifying because no representative of district attorney's office was present in courtroom; no evidence had been taken and no finding of fact could properly have been made. U.S.C.A. Const.Amend. 14; West's Ann.Cal.Penal Code § 1466(a)(2).

[2] Constitutional Law ⚿268(2.1)
92k268(2.1)
(Formerly 92k268(2))

A defendant's due process rights are not violated if a traffic infraction hearing is held without presence of a prosecutor, even if trial judge calls and questions witnesses. U.S.C.A. Const.Amend. 14.

[3] Criminal Law ⚿639.6
110k639.6
(Formerly 110k639(6))

District attorney was authorized to decline to appear in traffic infraction cases, under statute providing that he would attend courts, and "within his or her discretion * * * initiate" prosecution for public offenses. West's Ann.Cal.Gov.Code § 26500.

[4] Criminal Law ⚿639.6
110k639.6
(Formerly 110k639(6))

Municipal court lacked power to in effect decline to hear traffic infraction cases, by prohibiting prosecution testimony and entering purported "not guilty" findings, unless a representative of the district attorney's office appeared to prosecute case. West's Ann.Cal.C.C.P. § 128.

**542 *604 Dennis Kottmeier, Dist. Atty., and Joseph A. Burns, Deputy Dist. Atty., for petitioner.

*605 Roger Meadows, Pomona, for respondent.

No appearance for real party in interest.

HOLLENHORST, Acting Presiding Justice.

For the third time, the People, by and through Dennis Kottmeier, in his capacity as District Attorney for the County of San Bernardino, seek relief from this court from a policy imposed by the municipal court requiring the attendance of prosecutors at the trial of traffic infractions. [FN1] Although we have previously declined to assume jurisdiction and required petitioner to seek his available remedies in the lower courts, we find ourselves compelled at this time to intervene.

FN1. We consider this the correct way to characterize the policy of respondent court, despite its purported compliance with the order of the superior court forbidding it to compel such attendance. As will be discussed below, the court's actions in dismissing all such cases if no prosecutor appeared was a transparent effort to force petitioner to provide a deputy.

Petitioner (hereinafter sometimes "the District Attorney") filed his first petition with this court on October 3, 1989. This petition alleged that in July

1989, Judge David Merriam of respondent court notified petitioner that when he assumed the assignment **543 of traffic trials on July 28, he would require the attendance of a deputy district attorney to represent the People. [FN2] Petitioner responded by requesting the cancellation of this policy, relying on People v. Carlucci (1979) 23 Cal.3d 249, 152 Cal.Rptr. 439, 590 P.2d 15. Despite the intervention of Presiding Judge Anthony Piazza, this effort was unsuccessful, and on July 27, 1989, the District Attorney filed a petition for writ of prohibition with the superior court. On that same day, a copy of an alternative writ was served on respondent court and Judge Merriam, which forbade respondent from implementing its policy of requiring the presence of a deputy district attorney.

FN2. Traffic trials are apparently calendared for Friday mornings.

In response, at the calling of his traffic infraction calendar on July 28, 1989, Judge Merriam announced his intention to obey the alternative writ. However, he declined to permit any witnesses for the People to testify unless they were formally called by an attorney. As no deputy was present, the court called the defendants and not only allowed them to tell their side of the incidents, but affirmatively questioned them. In the case of each defendant whose "trial" was reflected in the transcript provided to this court, the municipal court accepted defendant's version and found the *606 defendants not guilty. Petitioner asserted, without denial, that 13 defendants were in fact so found not guilty on that date.

The District Attorney's efforts to obtain a revised order pending the hearing on his petition for writ of prohibition failed, although Judge Merriam eventually modified his practice to that of granting acquittals under Penal Code section 1118 in all cases in which no prosecutor was present. This continued throughout the month of August and into September of 1989. The People began filing notices of appeal on all such cases, which had passed 50 by the time the first petition was filed in this court. [FN3]

FN3. We are informed that by now, well over 130 such appeals have been filed by the People. We are also informed that, contrary to the superior court's belief that each appeal could conveniently be resolved with respect to its particular issues, the appellate department is awaiting this court's pronouncement of a general rule of law.

On September 22, the District Attorney's petition was heard by the superior court. Although no written judgment was ever presented as part of the record to this court, the superior court announced its intention to deny relief on the theory that the People's remedy by appeal in each case was adequate. The court expressed the opinion that each appeal would present a fully developed fact situation, and would also provide the opportunity for specific relief. The court noted that the original alternative writ had been effectively circumvented by the municipal court, and relied on this to show that a general order in mandate might not cover later practices or policies.

The District Attorney filed his first petition with this court on October 3, 1989, in which he sought a full review of the issues. We granted relief in only a limited sense, ordering the superior court to set aside its finding that the remedy by appeal was adequate, and directing it to hear the case on its merits.

In obedience to this order, the superior court conducted further proceedings, and issued a judgment on February 15, 1990, directing the municipal court to cease from requiring or compelling the attendance of a prosecutor at traffic infraction hearings.

With prophetic anxiety, the District Attorney again resorted to this court, seeking a broader order. We again denied the petition, but did so expressly without prejudice to future proceedings "should there be further dismissals or should the order and judgment otherwise fail to achieve a result consistent with the interests of justice." Although we were reluctant to presume that respondent would flout or deliberately circumvent the superior court's order, we hoped by our language to indicate our general agreement with the result reached.

*607 However, the instant petition was filed on March 1, 1990. Petitioner alleges that the municipal court has once again elected to comply with the letter of the **544 order rather than its spirit, in that, while it makes no effort to compel the attendance of a deputy district attorney by the threat of contempt or other legal coercion, it has continued to refuse to allow the People's witnesses to take the stand and has continued to dismiss the infraction

cases or enter judgments of acquittal. [FN4]

FN4. At some point over the last several months, Judge Ellen Brodie began to hear the traffic infraction calendar. She has expressed her solidarity with Judge Merriam on the issues of this case.

Availability of Relief

Four individuals have been named as real parties: James J. Charles, Jr., Dominic M. Davis, Anne M. Cordaro, and Jaime Giron. Their cases were called before respondent court on February 16, 1990. In no case was a deputy district attorney present, although police officers were present to testify; in no case was any witness sworn. When it appeared too that no deputy district attorney was in court, the court declined to call any witnesses and found each defendant not guilty.

[1] The People may appeal "an order or judgment dismissing or otherwise terminating the action before the defendant has been placed in jeopardy...." (Pen.Code, § 1466, subd. (a)(2).) Jeopardy does not attach, as a rule, until a witness has been sworn. (Richard M. v. Superior Court (1971) 4 Cal.3d 370, 376-377, 93 Cal.Rptr. 752, 482 P.2d 664.) Although the trial court in these cases purported to make a finding of "not guilty," we think the court's actions are properly construed as dismissals under Penal Code section 1385. No evidence was taken and no finding of fact could properly have been made; it is abundantly clear that the results occurred not because the People had failed to prove guilt, but because the court refused to conduct trials.

The orders were therefore appealable, and petitioner is entitled to seek the alternative of extraordinary relief. In this case it is beyond question that relegating the People to the remedy of appeal would delay resolution of an important public issue, and add to what is already a multiplicity of appeals. (See Hogya v. Superior Court (1977) 75 Cal.App.3d 122, 129-130, 142 Cal.Rptr. 325.)

DISCUSSION

Four distinct issues are presented by this petition. Does the conduct of infraction trials without the participation of a prosecutor violate a *608 defendant's right to due process? Does it violate the requirements of Government Code 26500? Does it improperly interfere with the court's inherent power to regulate and control its own procedures, and does it place the court in the intolerable position of playing the role of prosecutor? The first question is readily answered by resort to controlling authority; the other three require a more extended analysis.

In setting up the issues, however, we must observe that both sides have used lofty legal principles as a smoke screen to some extent. As we will have occasion to note again, this case is really a contest of wills between the court and the chief prosecutor. At oral argument, counsel for respondent stressed almost exclusively the court's desire to have a prosecutor present as an aid to the pre-trial disposition of cases, and it is apparent that the essential battle is over the allocation of judicial and prosecutorial resources where both sides are stretched too thin.

This, of course, is an administrative, not a legal, dispute, and one which this court cannot effectively resolve. We must therefore confine ourselves to the legal trappings of the case.

I.

Constitutional and Statutory Strictures

[2][3] In People v. Carlucci, supra, 23 Cal.3d 249, 152 Cal.Rptr. 439, 590 P.2d 15, the court held that there was no due process violation if an infraction hearing was held without the presence of the prosecutor. It further expressly held that no such violation existed by the fact that the trial **545 judge called and questioned witnesses, although it cautioned that the trial judge, in such a case, must be careful to avoid any appearance of bias or advocacy. (At pp. 256-258, 152 Cal.Rptr. 439, 590 P.2d 15.) However, in Carlucci the court did not consider the effect of Government Code section 26500.

That statute defines the duty of the district attorney, and states that he "shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses." The statute was amended in 1980 (Stats.1980, c. 1094), to add the portion italicized above.

In People v. Daggett (1988) 206 Cal.App.3d Supp.

1, 253 Cal.Rptr. 195, the appellate department of Sacramento County held that section 26500, as amended, did not require the attendance of a prosecutor at infraction trials. Relying in part on legislative history, the court ruled that the Legislature, in making the amendment, was conscious that the amended version would *609 grant the prosecutor discretion in appearing, as well as initiating a prosecution. [FN5] However, the court also pointed out that the amendments were made after the decision in People v. Carlucci, and that the Legislature was presumed to have been aware of the court's ruling that the prosecutor need not be present.

> FN5. Assembly Committee on Criminal Justice, Analysis of Senate Bill No. 1890, Comments, paragraph 4: "... This language appears to eliminate the existing mandate that the public prosecutor conduct all prosecutions for public offenses on behalf of the people and insert in it's [sic] stead discretionary provisions. Is this the intent? Different language should be drafted to accomplish the ostensible purpose of this provision without modifying the existing mandates (i.e. 'The public prosecutor shall attend the courts and conduct on behalf of the people all prosecutions which, within his/her discretion, have been initiated' ..."

Although the language of Government Code section 26500 is certainly not free from doubt, we agree with the result reached in People v. Daggett. The phrase "attend the courts" is too vague to be of much use in interpretation; what courts? When? On its face the statute then appears to grant the district attorney discretion both to initiate and conduct the prosecutions. This is undoubtedly the intention of the statute, insofar as it means that it is the district attorney's prerogative to determine whether to file charges and whether to continue a prosecution. (See People v. Adams (1974) 43 Cal.App.3d 697, 707-708, 117 Cal.Rptr. 905.) It is less clear that the statute was intended to permit the district attorney to choose when to appear for trial, or what the result of his absence should be.

We note that it has been stated that the provisions of Government Code section 26500 requiring the presence of the prosecutor "are for the benefit of the people." (People v. Thompson (1940) 41 Cal.App.2d Supp. 965, 967, 108 P.2d 105.) This suggests that there is discretion not to appear, if the district attorney is willing to take the consequences of an adverse verdict or ruling, which in most misdemeanor and felony cases would be a foregone conclusion. If the District Attorney elected not to appear at a serious felony trial involving complex issues and numerous witnesses, two things would be clear: he would be in gross dereliction of his duty to the people of the state under Government Code section 26500, and the court would be justified in dismissing the case.

However, we do not think it either necessary or proper to consider such a situation, which is not before us. In People v. Carlucci, supra, the court extensively discussed the unique nature of infraction prosecutions and the benefits to all sides of encouraging expeditious and flexible procedures. (See also In re Dennis (1976) 18 Cal.3d 687, 695, 135 Cal.Rptr. 82, 557 P.2d 514.) The prohibition against appointed counsel in infraction cases (Pen.Code, § 19c) ensures that the majority of defendants will be *610 unrepresented, and the presence of a prosecutor would be "hardly to defendant's advantage." (People v. Carlucci, supra, 23 Cal.3d at p. 258, 152 Cal.Rptr. 439, 590 P.2d 15.) We need not repeat in detail that court's recital of the practical considerations underlying the decision that such cases may be handled without the presence of a prosecutor; we need **546 only agree and hold that petitioner's decision not to provide a prosecutor for infraction trials is not forbidden by Government Code section 26500.

II.
Interference With the Court's Control of Its Procedures

[4] While a court unquestionably has the power to enforce an attorney's duty to appear where a commitment to do so has been made (see In re Stanley (1981) 114 Cal.App.3d 588, 591, 170 Cal.Rptr. 755), the remedy is less certain where the district attorney simply declines to personally appear in a class of cases. Thus, we think the judgment by the superior court, which forbade any attempt to compel the attendance of a deputy district attorney, was correct.

Respondent argues, however, that it had the power and the right to refuse, in effect, to hear the trials in the absence of the prosecutor. It argues that it cannot in turn be forced to conduct trials without the assistance of an attorney for the People, and to assume the responsibility of ensuring that both sides

fairly and completely present their cases. [FN6]

FN6. That respondent court's real grievance is quite different is again suggested by remarks made by Judge Brodie. After the superior court issued its judgment, she dismissed several cases due to the absence of a prosecutor, and then made the following comments, obviously directed to the law enforcement witnesses who had not been permitted to testify: "THE COURT: ... You're found not guilty, sir. [¶] Officers, I want to say something to you. I would be very upset indeed if I were you and was put in the position of having the prosecutor of this county, the district attorney of this county, place so little worth on what you are doing that they won't send a deputy to court to prosecute your cases. [¶] Where is Mr. Goss? Where is Mr. Williams? Where is Miss Djanbatlan? Where is Mr. Weintre? And where is Mr. Carroll? [¶] Not one of them is in Superior Court. One of them may be in Department A doing law and motion. The other four have nowhere to go on Friday mornings, no court appearances that I am aware of. [¶] And it seems to me that the elected district attorney of this county should fulfill his duty that he has been elected to perform and send people to court. [¶] We all do our jobs. You do your jobs. I do my job. And the district attorney should be doing his job."

We agree that, applied to an extreme case, this argument is not without merit. However, as discussed above, we are not considering an extreme case, but only infractions normally processed rapidly and informally.

The evident antagonism between petitioner and at least some members of respondent court is not difficult to understand, and neither side is wholly *611 virtuous or unreasonable. The District Attorney doubtless considers his office understaffed and overworked, and believes that his deputies may be more usefully employed in more serious cases. Respondent feels that it is being inappropriately denigrated and ignored, and that its role as the only contact many citizens have with the court system deserves more consideration by the District Attorney. (See People v. Daggett, supra, dissenting opn. of Marvin, J., 206 Cal.App.3d Supp. pp. 6-7, 253 Cal.Rptr. 195.) However, both sides appear to forget their joint interest in both the smooth functioning of the system and the goal of achieving justice. [FN7]

FN7. Furthermore, respondent's approach has had the unfortunate result of exposing the judicial system to ridicule. We can only wince when contemplating the reactions of those members of the public who found themselves caught up in this charade. We are also sympathetic to the burdens imposed on the individual defendants against whom the People have determined to prosecute appeals, or who have been named here as real parties. For them, a trivial transgression has exposed them to the legal system at its most protracted and irrational.

Every court has certain inherent powers to control and manage the proceedings before it. (Code Civ.Proc., § 128.) However, this power "should be exercised by the courts in order to insure the orderly administration of justice" (Hays v. Superior Court (1940) 16 Cal.2d 260, 105 P.2d 975) and not as a weapon in a battle of priorities. We do not see that requiring respondent court to allow infraction proceedings to be held in the absence of a deputy prosecutor necessarily invades its powers or dignity.

**547 III.

Finally, respondent asserts its concern over being "compelled" to play the role of advocate in questioning the People's witnesses. We observe that the record in this case indicates that the court saw nothing improper in questioning defendants, and indeed there was not; it is the duty of the trial court to assist in bringing out the facts, within reasonable limits, to the end of reaching a just result. (People v. Carlucci, supra, 23 Cal.3d at p. 256, 152 Cal.Rptr. 439, 590 P.2d 15; Estate of Dupont (1943) 60 Cal.App.2d 276, 140 P.2d 866.) In fact, Judge Merriam's practice of calling defendants and then questioning them extensively supports the inference that the present zealous concern for the court's appearance of untainted impartiality has merely been cobbled up to justify its actions.

However, we stop short of holding that respondent court must take the initiative in examining the People's witnesses, as we agree that no court should be placed in the position of appearing to assist one side over the other. This principle should be most carefully and rigorously followed where the party being questioned appears for the prosecution, to avoid the inference that the court and law enforcement are "in cahoots" and the *612 result of the trial a foregone conclusion. (See generally McCartney v. Commission on Judicial

Qualifications (1974) 12 Cal.3d 512, 116 Cal.Rptr. 260, 526 P.2d 268.)

As the superior court observed, there are difficulties in resolving the case in a manner which will cover all eventualities without placing unnecessary and improper strictures on either party. In attempting to do so, this court must to some extent depend on the good faith of both sides, although the unresolved, underlying basis of the dispute makes such reliance probably over-optimistic.

The municipal court may properly require the District Attorney to supply a list of witnesses for each case, for example; the court should then permit the witnesses to give a narrative recital. The court has no obligation, however, to assist the People's witnesses in presenting the case, and we recognize its continuing discretion to request the presence of a prosecutor in the unusual case.

We requested respondent and real parties to respond to the petition and held oral argument. The case is appropriate for the issuance of a peremptory writ in the first instance. (Code Civ.Proc., § 1088; Palma v. U.S. Industrial Fasteners, Inc. (1984) 36 Cal.3d 171, 178-179, 203 Cal.Rptr. 626, 681 P.2d 893.)

Let a peremptory writ of mandate issue directed to the Municipal Court of San Bernardino County, directing it to vacate its orders terminating proceedings on a purported finding of "not guilty" in those actions entitled People v. James J. Charles, Jr., action No. ONM 10842; People v. Dominic M. Davis, action No. ONM 118411; People v. Anne M. Cordaro, action No. SH 592271, and People v. Jaime Giron, action No. SH 604856 and to reinstate the complaints in said action. Respondent is further directed to proceed to conduct trials in said matters in conformity with the views expressed in this opinion.

McDANIEL and DABNEY, JJ., concur.

END OF DOCUMENT

EXHIBIT I

State of California
COMMISSION ON STATE MANDATES
1300 I Street, Suite 950
Sacramento, CA 95814
(916) 323-3562
CSM 1 (2 91)

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COMMISSION ON
STATE MANDATES

Claim No. 98-TC-13

TEST CLAIM FORM

Local Agency or School District Submitting Claim

County of Alameda

Contact Person — Telephone No.

Allan P. Burdick/Pamela A. Stone (DMG-MAXIMUS, INC.) — (916) 485-8102
Fax (916) 485-0111

Address

4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Representative Organization to be Notified

California State Association of Counties

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIIIB of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

Chapter 546, Statutes of 1984

Chapter 267, Statutes of 1998

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative — Telephone No.

Thomas Orloff, District Attorney — (510) 272-6217

Signature of Authorized Representative — Date

5/5/99

BEFORE THE
COMMISSION ON STATE MANDATES

Test Claim of:
County of Alameda

Extended Commitment - Youth Authority

Chapter 546, Statutes of 1984
Chapter 267, Statutes of 1998

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

The statutes cited above on which this test claim is based, amend Sections 1800, 1801 and 1801.5 of the Welfare and Institutions Code, and transfers responsibility for discharging the duties from the Youthful Offender Parole Board to the District Attorney of the applicable county.

Section 1800 specifies that if the Youthful Offender Parole Board determines that the discharge of a person from the control of the Youth Authority at the time required would be physically dangerous to the public because of the person's mental or physical deficiency, disorder or abnormality, the Board's chairman is required to refer the matter to the District Attorney to petition the committing court for an order directing that the person remain subject to the control of the Youth Authority. The statute requires that the petition must be filed at least 90 days before the date of scheduled discharge. The petition is required to be accompanied by a written statement of facts upon which the Board has based its opinion that discharge from the control of the Youth Authority at the time stated would be physically dangerous to the public. The statute also provides that the petition shall not be dismissed or an order denied because of technical defects in the petition.

Once the petition is filed, pursuant to Section 1801, the court must provide notice of the application to the person who is the subject of the petition, and if a minor, to his or her parents or guardian, and if there is no parent or guardian, the court is required to appoint a person to act in the place of the parent or guardian. The person who is the subject of the petition has the right to counsel, and to compel witnesses and production of evidence. If the court is of the opinion that the person would be physically dangerous to the public due to his or her mental or physical deficiency, disorder or abnormality, the court is to order the Youth Authority to continue treatment. If the court is of the opinion that discharge would not be physically dangerous, the court is required to discharge the person.

If the person is ordered returned to the Youth Authority, he or she, or his or her parent or guardian may, within 10 days of the order, file a written demand that the matter be tried before a jury in the superior court of the county from which the person was committed. The court is required to commence the trial not less than four days, nor more than 30 days from the date of the written demand. The statute also specifies that the person who is the subject of the proceeding shall have all rights guaranteed under the federal and state constitution in criminal proceedings, that the trial requires a unanimous jury verdict, and that the burden of proof is beyond a reasonable doubt.

Prior to the amendment of these statutes by Chapter 546, Statutes of 1984, and Chapter 267, Statutes of 1998, it was the obligation of the Youth Authority Board, and then the Youth Offender Parole Board, to present these matters before the superior court in the county from which the individual who is the subject of the proceeding, was committed.

With the transfer of responsibility from the Youth Offender Parole Board to the local District Attorney, the local District Attorney is now responsible for the prosecution of these actions. The Youth Offender Parole Board makes the determination as to whether the subject individual is dangerous, and if so, they send a referral to the District Attorney to file for a two year hold. With the referral is sent a copy of the master file on the ward, which includes various psychiatric reports. This requires a review of the file, and determination as to whether there is a basis to proceed. Due to the evidentiary nature of the hearing, it is necessary to employ experts to testify at both the hearing, and if requested, the jury trial, as to the dangerousness of the person, and whether that is the result of a mental or physical deficiency, disorder or abnormality.

In order to adequately prepare for trial, it is not only necessary to review the documentation provided by the Youth Offender Parole Board, and to obtain the requisite expert witnesses, but it is also ecessary to interview the youth counselors at the California Youth Authority facility, various parole officers and others who have witnessed particular acts, which may be in a locale far from the committing court. Furthermore, practice has shown that if the matter goes to jury trial, it is usually necessary to prove the underlying offense and other acts of misconduct in order to prove the psychiatric diagnosis.

Although the caseload of these referrals is not great, the time and resources that are consumed by these cases is great.

B. LEGISLATIVE HISTORY PRIOR TO 1975

Section 1800 was originally enacted with the passage of Chapter 1693, Statutes of 1963, As originally enacted, Section 1800 stated:

> Whenever the Youth Authority Board determines that the discharge of a person from the control of the Youth Authority at the time required by Section 1769, 1770, or 1771, as applicable, would be physically dangerous to the

> public because the person's mental or physical deficiency, disorder, or abnormality, the board, through its chairman, shall make application to the committing court for an order directing that the person remain subject to the control of the authority beyond such time. The application shall be filed at least 90 days before the time of discharge otherwise required. The application shall be accompanied by a written statement of the facts upon which the board bases its opinion that discharge from control of the Youth Authority at the time stated would be physically dangerous to the public, but no such application shall be dismissed nor shall an order be denied merely because of technical defects in the application.

Section 1800 was amended by the enactment of Chapter 371, Statutes of 1970. As then amended, Section 1800 stated:

> Whenever the Youth Authority Board determines that the discharge of a person from the control of the Youth Authority at the time required by Section 1769, 1770, 1770.1, or 1771, as applicable, would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality, **the board, through its chairman, shall make application to the committing court** for an order directing that the person remain subject to the control of the authority beyond such time. The application shall be filed at least 90 days before the time of discharge otherwise required. The application shall be accompanied by written statement of the facts upon which the board bases its opinion that discharge from control of the Youth Authority at the time stated would be physically dangerous to the public, but no such application shall be dismissed nor shall an order be denied merely because of technical defects in the application. [Emphasis added.]

Thus, prior to 1975, the obligation to file the petition with the committing court rested with the Youth Authority Board. In 1979, with the passage of Chapter 860, Statutes of 1979, the Youth Authority Board was changed to the Youth Offender Parole Board.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

With the transfer of responsibility for the filing and prosecution of these actions from the Youth Authority Board and subsequently the Youthful Offender Parole Board, to the District Attorney of the committing court, the Sections that are involved with this program are Welfare and Institutions, Sections 1800 through 1803. All of these sections are directly related to the reimbursable provisions of this test claim.

D. COST ESTIMATES

The case load for Alameda County is determined by the number of referrals made to the District Attorney by the Youth Offender Parole Board. In fiscal year 1997-98, three cases were heard to completion. The average salary of a Deputy District Attorney for Alameda County is $54.00 per hour, plus a benefit rate of $15.00 per hour, for a total cost of $69.00 per hour. The case names, attorney hours spent and the total attorney time per case is as follows:

Spooner	25 hours	x	$69.00 per hour =	$ 1,725
Gullette	40 hours	x	$69.00 per hour =	$ 2,760
Atkinson	160 hours	x	$69.00 per hour =	$11,040
Bolosan	240 hours	x	$69.00 per hour =	$16,560
	TOTAL:			$32,085

It is anticipated that there will continue to be cases referred to the District Attorney by the Youth Offender Parole Board, and the referrals and nature of the cases will determine the ongoing costs of this program. The foregoing costs are for attorney time only, and does not include costs of expert witnesses, witness fees, investigators, or expenses.

E. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by Alameda County as a result of the statutes included in this test claim are all reimbursable as such costs are "costs mandated by the State" under Article XIIIB, Section 6 of the California Constitution, and Section 17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines "costs mandated by the state", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."

2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975."

3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution."

F. MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by these three statutes clearly meets both tests that the Supreme Court in the *County of Los Angeles* v. *State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" and the "carry out a state policy" test. Their application to this test claim is discussed below.

Mandate Is Unique to Local Government

The statutory scheme set forth above imposes a unique requirement on local government. Only local government is authorized to file the civil commitments required by this statutory scheme, and only the district attorney of the committing court, upon referral by the Youthful Offender Parole Board. This mandate applies only to local government.

Mandate Carries Out a State Policy

The mandate clearly carries out the state policy that those individuals committed to the California Youth Authority, who are deemed physically dangerous to the public because of the person's mental or physical deficiency, disorder or abnormality, be civilly committed after their time would otherwise have ended. This carries out a policy that those individuals who are physically dangerous to the public be retained for further treatment by the California Youth Authority.

In summary, these statutes mandate that the Alameda County District Attorney prosecute the extended civil commitments as referred by the Youthful Offender Parole Board, which clearly meets both Supreme Court tests.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code, Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code, Section 17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.

2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.

3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

4. The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.

6. The statute or executive order imposes duties which were expressly included in a ballot measure approved by the voters in a Statewide election.

7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

None of the above disclaimers have any application to Alameda County's test claim.

CONCLUSION

The enactment of Chapter 546, Statutes of 1984 imposed a new state mandated program and cost on the County of Alameda, by requiring it to prosecute all extended civil commitment referrals from the Youthful Offender Parole Board. The mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program. None of the so-called disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement have any application to this claim.

G. CLAIM REQUIREMENTS

The following elements of this test claim are provided pursuant to Title 2, California Code of Regulations, Section 1183:

Exhibit 1:	Chapter 546, Statutes of 1984
Exhibit 2:	Chapter 267, Statutes of 1998
Exhibit 3:	Chapter 1693, Statutes of 1963
	Chapter 371, Statutes of 1970

Chapter 860, Statutes of 1979

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury of the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 5 day of April, 1999, at Oakland, California.

Thomas Orloff
District Attorney
County of Alameda

DECLARATION OF KAREN MEREDITH

Test Claim of:
County of Alameda

Extended Commitment - Youth Authority

Chapter 546, Statutes of 1984

KAREN MEREDITH makes the following declarations and statements under oath:

I am an attorney licensed to practice in all courts of this state, and I have personal knowledge of the facts stated herein, and if so required, I could and would testify competently to the facts stated herein. I am a Deputy District Attorney with the Alameda County District Attorney's Office. In the course of my duties, I am one of the attorneys assigned to handle referrals from the Youthful Offender Parole Board to prosecute extended commitments.

The California Youth Authority (CYA) can keep some people within their system until they turn 21 for certain offenses, and for other offenses, until they turn 25. However, if the California Youth Authority believes that someone has a mental illness, defect or disorder which makes them dangerous to the public, they can petition to extend that person's commitment to the CYA for an additional two years. Theoretically, if someone's term is over before they turn 21 or 25 years of age, depending upon the offense, they can also request the extension.

The Youthful Offender Parole Board makes the decision as to whether someone's commitment should be extended, and if they decide that there should be an extension, they send a referral to the District Attorney of the committing court, requesting that the District Attorney petition the court to allow the additional two year hold. With the referral, the Board sends the master file on the ward, which includes a substantial amount of information and the referral letter. In order to determine whether the petition would be successful in the court, it is necessary for the District Attorney assigned to the matter to review the file in detail. In the master file, there are psychiatric reports. It is usually necessary to retain experts in order to pursue the petition. It is often necessary to have an investigator within the District Attorney's office assist in preparing the case for hearing.

There are two different stages to the proceedings. There is the initial hearing before the court, where the court decides at a probable cause hearing, whether there is reason to keep the person for an additional two years. It should be noted that at this hearing, the District Attorney puts on a *prima facie* case. After the hearing, if the ward is to be detained, he or she has the right to have a jury trial within 30 days. For the jury trial, the standard is beyond a reasonable doubt. Although it is a civil commitment, the ward is afforded the same protections as a criminal defendant.

At the hearing, you need psychiatrists, youth counselors at CYA, the parole officers, and individuals who have witnessed particular acts to testify. Often, if the matter goes to jury trial, it is necessary to retry the underlying offenses, in order to prove the basis for the psychiatric diagnosis and the dangerousness of the ward. Furthermore, the witnesses are often not located in the county of commitment where the hearings are to take place, but at the CYA facility where the ward has been committed.

These cases can be difficult and take a long time to try. One hearing I handled this past fiscal year took three weeks, and the jury trial lasted three weeks.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed this 5 day of May, 1999, at Oakland, California.

K Meredith

KAREN MEREDITH

CHAPTER 546

An act to amend Sections 1800, 1801, and 1801.5 of the Welfare and Institutions Code, relating to the Youth Authority.

[Approved by Governor July 17, 1984. Filed with Secretary of State July 17, 1984.]

The people of the State of California do enact as follows:

SECTION 1. Section 1800 of the Welfare and Institutions Code is amended to read:

1800. Whenever the Youthful Offender Parole Board determines that the discharge of a person from the control of the Youth Authority at the time required by Section 1766, 1769, 1770, 1770.1, or 1771, as applicable, would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality, the board, through its chairman, shall request the prosecuting attorney to petition the committing court for an order providing that the person remain subject to the control of the authority beyond that time. The petition shall be filed at least 90 days before the time of discharge otherwise required. The petition shall be accompanied by a written statement of the facts upon which the board bases its opinion that discharge from control of the Youth Authority at the time stated would be physically dangerous to the public, but no such petition shall be dismissed nor shall an order be denied merely because of technical defects in the application.

The prosecuting attorney shall promptly notify the Youthful Offender Parole Board of a decision not to file a petition.

SEC. 2. Section 1801 of the Welfare and Institutions Code is amended to read:

1801. If a petition is filed with the court for an order as provided in Section 1800, the court shall notify the person whose liberty is involved, and, if the person is a minor, his or her parent or guardian (if that person can be reached, and, if not, the court shall appoint a person to act in the place of the parent or guardian) of the application, and shall afford the person an opportunity to appear in court with the aid of counsel and of process to compel attendance of witnesses and production of evidence. When the person is unable to provide his or her own counsel, the court shall appoint counsel to represent him or her.

If after a full hearing the court is of the opinion that discharge of the person would be physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality, the court shall order the Youth Authority to continue the treatment of the person. If the court is of the opinion that discharge of the person from continued control of the authority would not be physically dangerous to the public, the court shall order the person to be discharged from control of the authority.

SEC. 3. Section 1801.5 of the Welfare and Institutions Code is amended to read:

1801.5. If the person is ordered returned to the Youth Authority following a hearing by the court, the person, or his or her parent or guardian on the person's behalf, may, within 10 days after the making of such order, file a written demand that the question of whether he or she is physically dangerous to the public be tried by a jury in the superior court of the county in which he or she was committed. Thereupon, the court shall cause a jury to be summoned and to be in attendance at a date stated, not less than four days nor more than 30 days from the date of the demand for a jury trial. The court shall submit to the jury the question: Is the person physically dangerous to the public because of his mental or physical deficiency, disorder, or abnormality? The court's previous order entered pursuant to Section 1801 shall not be read to the jury, nor alluded to in such trial. The person shall be entitled to all rights guaranteed under the federal and state constitutions in criminal proceedings. The trial shall require a unanimous jury verdict, employing the standard of proof beyond a reasonable doubt.

SEC. 4. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

SEC. 5. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 547

An act to amend Section 79150 of the Education Code, relating to community college districts.

[Approved by Governor July 17, 1984. Filed with Secretary of State July 17, 1984.]

The people of the State of California do enact as follows:

SECTION 1. Section 79150 of the Education Code is amended to read:

79150. The Chancellor's office of the California Community Colleges, in cooperation with the State Department of Social Services and the State Employment Development Department, may enter into agreements with community college districts, which, prior

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Senate Bill No. 2187

*CHAPTER 267

An act to amend Sections 1801 and 1801.5 of the Welfare and Institutions Code, relating to youthful offenders.

[Approved by Governor August 5, 1998. Filed with Secretary of State August 6, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2187, Schiff. Youthful offenders: continued treatment.

Existing law requires the court to order the Department of the Youth Authority to continue the treatment of a person who is otherwise eligible for discharge from the control of the department if the court, after the filing of a petition for further detention by the prosecuting attorney and a full hearing, is of the opinion that discharge of the person would be physically dangerous to the public for specified reasons. Existing law provides that if, after the court hearing, the person is ordered to remain subject to the control of the department, the person is entitled to request a jury trial on the question of whether he or she is physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality.

This bill would instead provide that, upon review of the petition for further detention as specified, the court shall order a hearing to determine if probable cause exists to believe that discharge of the person would be dangerous to the public for specified reasons. If, following the hearing, probable cause is found, a jury trial or, if a jury is waived, a court trial would be required to be held to determine if the person is physically dangerous to the public. Because this bill would impose expanded duties on court personnel, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 1801 of the Welfare and Institutions Code is amended to read:

1801. (a) If a petition is filed with the court for an order as provided in Section 1800, and, upon review, the court determines that the petition, on its face, supports a finding of probable cause, the court shall order that a hearing be held pursuant to subdivision (b). The court shall notify the person whose liberty is involved, and, if the person is a minor, his or her parent or guardian (if that person can be reached, and, if not, the court shall appoint a person to act in the place of the parent or guardian) of the hearing, and shall afford the person an opportunity to appear at the hearing with the aid of counsel and the right to cross examine experts or other witnesses upon whose information, opinion or testimony the petition is based. The court shall inform the person named in the petition of his or her right of process to compel attendance or relevant witnesses and the production of relevant evidence. When the person is unable to provide his or her own counsel, the court shall appoint counsel to represent him or her.

The probable cause hearing shall be held within 10 calendar days after the date the order is issued pursuant to this subdivision unless the person named in the petition waives this time.

(b) At the probable cause hearing, the court shall receive evidence and determine whether there is probable cause to believe that discharge of the person would be physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality. If the court determines there is not probable cause, the court shall dismiss the petition and the person shall be discharged from the control of the authority at the time required by Section 1766, 1769, 1770, 1770.1, or 1771, as applicable. If the court determines that there is probable cause, the court shall order that a trial be conducted to determine whether the person is physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality.

SEC. 2. Section 1801.5 of the Welfare and Institutions Code is amended to read:

1801.5. If a trial is ordered pursuant to Section 1801, the trial shall be by jury unless the right to a jury trial is personally waived by the person, after he or she has been fully advised of the constitutional rights being waived, and by the prosecuting attorney, in which case trial shall be by the court. If the jury is not waived, the court shall cause a jury to be summoned and to be in attendance at a date stated, not less than four days nor more than 30 days from the date of the order for trial, unless the person named in the petition waives time. The court shall submit to the jury, or, at a court trial, the court shall answer, the question: Is the person physically dangerous to the public

because of his or her mental or physical deficiency, disorder, or abnormality? The court's previous order entered pursuant to Section 1801 shall not be read to the jury, nor alluded to in the trial. The person shall be entitled to all rights guaranteed under the federal and state constitutions in criminal proceedings. A unanimous jury verdict shall be required in any jury trial. As to either a court or a jury trial, the standard of proof shall be that of proof beyond a reasonable doubt.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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CHAPTER 1692

An act to amend Section 69583 of the Government Code, relating to the number of superior court judges in Fresno County.

[Approved by Governor July 15, 1963. Filed with Secretary of State July 17, 1963.]

The people of the State of California do enact as follows:

SECTION 1. Section 69583 of the Government Code is amended to read:

69583. In the County of Fresno there shall be seven judges of the superior court.

CHAPTER 1693

An act to amend Sections 1769, 1770, and 1771 of, and to add Article 6 (commencing with Section 1800) to Chapter 1, Division 2.5 of, the Welfare and Institutions Code, relating to persons committed to the Youth Authority.

[Approved by Governor July 15, 1963. Filed with Secretary of State July 17, 1963.]

The people of the State of California do enact as follows:

SECTION 1. Section 1769 of the Welfare and Institutions Code is amended to read:

1769. Every person committed to the authority by a juvenile court shall be discharged upon the expiration of a two-year period of control or when the person reaches his 21st birthday, whichever occurs later, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800).

SEC. 2. Section 1770 of said code is amended to read:

1770. Every person convicted of a misdemeanor and committed to the authority shall be discharged upon the expiration of a two-year period of control or when the person reaches his 23d birthday, whichever occurs later, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800).

SEC. 3. Section 1771 of said code is amended to read:

1771. Every person convicted of a felony and committed to the authority shall be discharged when such person reaches his 25th birthday, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800) or unless a petition is filed under Article 5 of this chapter. In the event such a petition under Article 5 is filed, the authority shall retain control until the final disposition of the proceeding under Article 5.

SEC. 4. Article 6 (commencing with Section 1800) is added to Chapter 1 of Division 2.5 of said code, to read:

Article 6. Extended Detention of Dangerous Persons

1800. Whenever the Youth Authority Board determines that the discharge of a person from the control of the Youth Authority at the time required by Section 1769, 1770, or 1771, as applicable, would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality, the board, through its chairman, shall make application to the committing court for an order directing that the person remain subject to the control of the authority beyond such time. The application shall be filed at least 90 days before the time of discharge otherwise required. The application shall be accompanied by a written statement of the facts upon which the board bases its opinion that discharge from control of the Youth Authority at the time stated would be physically dangerous to the public, but no such application shall be dismissed nor shall an order be denied merely because of technical defects in the application.

1801. If the board applies to the court for an order as provided in Section 1800, the court shall notify the person whose liberty is involved, and, if he is a minor, his parent or guardian (if such person can be reached, and, if not, the court shall appoint a person to act in the place of the parent or guardian) of the application, and shall afford him an opportunity to appear in court with the aid of counsel and of process to compel attendance of witnesses and production of evidence. When he is unable to provide his own counsel, the court shall appoint counsel to represent him.

If after a full hearing the court is of the opinion that discharge of the person would be physically dangerous to the public because of his mental or physical deficiency, disorder, or abnormality the court shall order the Youth Authority to continue the treatment of such person. If the court is of the opinion that discharge of the person from continued control of the authority would not be physically dangerous to the public, the court shall order the person to be discharged from control of the authority.

1802. When an order for continued detention is made as provided in Section 1801, the control of the authority over the person shall continue, subject to the provisions of this chapter, but, unless the person is previously discharged as provided in Section 1766, the authority shall, within two years after the date of such order in the case of persons committed by the juvenile court, or within five years after the date of such order in the case of persons committed after conviction in criminal proceedings, file a new application for continued detention in accordance with the provisions of Section 1800 if continued detention is deemed necessary. Such applications may be repeated at intervals as often as in the opinion of the authority

may be necessary for the protection of the public, except that the authority shall have power, in order to protect other persons in the custody of the authority, to transfer the custody of any person over 21 years of age to the Director of Corrections for placement in the appropriate institution.

Every person shall be discharged from the control of the authority at the termination of the period stated in this section unless the board has filed a new application and the court has made a new order for continued detention as provided above in this section.

1803. An order of the committing court made pursuant to this article is appealable by the person whose liberty is involved in the same manner as a judgment in a criminal case. The appellate court may affirm the order of the lower court, or modify it, or reverse it and order the appellant to be discharged. Pending appeal, the appellant shall remain under the control of the authority.

SEC. 5. This act shall remain in effect until the 91st day after the final adjournment of the 1965 Regular Session of the Legislature, and shall have no force or effect after that date.

CHAPTER 1694

An act to amend Section 69591 of the Government Code, relating to the number of judges of the Orange County Superior Court.

[Approved by Governor July 15, 1963. Filed with Secretary of State July 17, 1963.]

The people of the State of California do enact as follows:

SECTION 1. Section 69591 of the Government Code is amended to read:

69591. In the County of Orange there shall be 15 judges of the superior court. On and after July 1, 1964, there shall be 16 judges.

CHAPTER 1695

An act to amend Section 74551 of the Government Code, relating to the San José-Alviso Judicial District.

[Approved by Governor July 15, 1963. Filed with Secretary of State July 17, 1963.]

The people of the State of California do enact as follows:

SECTION 1. Section 74551 of the Government Code is amended to read:

74551. There shall be eight judges.

CHAPTER 370

An act to amend Section 31760.1 of the Government Code, relating to the County Employees Retirement Law of 1937.

[Approved by Governor July 13, 1970. Filed with Secretary of State July 13, 1970.]

The people of the State of California do enact as follows:

SECTION 1. Section 31760.1 of the Government Code is amended to read:

31760.1. Upon the death of any member after retirement for service or non-service-connected disability from a retirement system established in a county subject to the provisions of Section 31676.1, 60 percent of his retirement allowance, if not modified in accordance with one of the optional settlements specified in this article, shall be continued throughout life to his surviving spouse if such spouse is designated as beneficiary. If there be no surviving spouse entitled to an allowance hereunder or if she or he dies before every child of such deceased member attains the age of 18 years, then the allowance which the surviving spouse would have received had she or he lived, shall be paid to his child or children under said age collectively, to continue until every such child dies or attains said age; provided, that no child shall receive any allowance after marrying or attaining the age of 18 years. No allowance, however, shall be paid under this section to a surviving spouse unless she or he was married to the member at least one year prior to the date of his retirement.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to such children through the age of 21 if such children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

If at the death of any retired member there is no surviving spouse or minor children eligible for the 60-percent continuance provided in this section, and the total retirement allowance income received by him during his lifetime did not equal or exceed his accumulated normal contributions, his designated beneficiary shall be paid an amount equal to the excess of his accumulated normal contributions over his total retirement allowance income.

CHAPTER 371

An act to amend Section 1800 of, and to add Section 1770.1 to, the Welfare and Institutions Code, relating to the Youth Authority.

[Approved by Governor July 13, 1970. Filed with Secretary of State July 13, 1970.]

The people of the State of California do enact as follows:

SECTION 1. Section 1770.1 is added to the Welfare and Institutions Code, to read:

1770.1. Every person convicted of a violation of Section 1768.7 and committed to the authority shall be discharged upon the expiration of a two-year period of control, when the person reaches his 23rd birthday, or six months after his discharge from the commitment he was serving at the time of his escape, whichever occurs later, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800) of Chapter 1 of Division 2.5.

SEC. 2. Section 1800 of the Welfare and Institutions Code is amended to read:

1800. Whenever the Youth Authority Board determines that the discharge of a person from the control of the Youth Authority at the time required by Section 1769, 1770, 1770.1, or 1771, as applicable, would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality, the board, through its chairman, shall make application to the committing court for an order directing that the person remain subject to the control of the authority beyond such time. The application shall be filed at least 90 days before the time of discharge otherwise required. The application shall be accompanied by a written statement of the facts upon which the board bases its opinion that discharge from control of the Youth Authority at the time stated would be physically dangerous to the public, but no such application shall be dismissed nor shall an order be denied merely because of technical defects in the application.

CHAPTER 372

An act to amend Section 14685 of, to add Section 14613 to, and to repeal Section 14613 of, the Government Code, relating to the Department of General Services.

[Approved by Governor July 13, 1970. Filed with Secretary of State July 13, 1970.]

The people of the State of California do enact as follows:

SECTION 1. Section 14613 of the Government Code is repealed.

SEC. 2. Section 14613 is added to the Government Code, to read:

14613. There is in the Department of General Services the California State Police Division.

The director shall appoint members and employees of the California State Police Division as may be necessary to protect and provide police services for the state buildings and grounds and occupants thereof. Members and security officers

proof of eligibility has been provided. The form and content of s receipts shall be determined by the provider but shall be suffic to comply with the intent of this subdivision. Skilled nursing facili and intermediate care facilities are exempt from the requirem of this subdivision.

SEC. 2. Section 2 of Chapter 672 of the Statutes of 197 repealed.

CHAPTER 860

An act to amend Sections 11501.5, 11555, and 11556 of Government Code, to amend Sections 6025.5, 13011, and 13020 of Penal Code, and to amend Sections 731, 780, 1000.7, 1009, 1176, 1 1178, 1703, 1737.1, 1753, 1754, 1757, 1760, 1765, 1766, 1767.3, 176 1767.5, 1772, 1776, 1780, 1782, 1800, 1802, and 1830 of, to add Art 2 (commencing with Section 1710) and Article 2.5 (commenc with Section 1716) to Chapter 1 of Division 2.5 of, and to rep Article 2 (commencing with Section 1710) of Chapter 1 of Divis 2.5 and Sections 1751, 1762, 1764, and 1767 of, the Welfare Institutions Code, relating to the Youth Authority.

[Approved by Governor September 21, 1979. Filed with Secretary of State September 22, 1979.]

The people of the State of California do enact as follows:

SECTION 1. Section 11501.5 of the Government Code, amended by Chapter 255 of the Statutes of 1979, is amended to re

11501.5. (a) The following state agencies shall provide langu assistance at adjudicatory hearings pursuant to subdivision (d) Section 11513:

Agricultural Labor Relations Board
State Department of Alcohol and Drug Abuse
Athletic Commission
California Unemployment Insurance Appeals Board
Board of Prison Terms
Board of Cosmetology
State Department of Developmental Services
Public Employment Relations Board
Franchise Tax Board
State Department of Health Services
Department of Housing and Community Development
Department of Industrial Relations
State Department of Mental Health
Department of Motor Vehicles
Notary Public Section, office of the Secretary of State
Public Utilities Commission
Office of Statewide Health Planning and Development

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State Department of Social Services
Workers' Compensation Appeals Board
Department of the Youth Authority
Youthful Offender Parole Board
Bureau of Employment Agencies
Board of Barber Examiners
Department of Insurance
State Personnel Board

(b) Nothing in this section shall be construed to prevent any agency other than those listed in subdivision (a) from electing to adopt any of the procedures set forth in subdivision (d), (e), (f), (g), (h), or (i) of Section 11513, except that the State Personnel Board shall determine the general language proficiency of prospective interpreters as described in subdivisions (d) and (e) of Section 11513 unless otherwise provided for as described in subdivision (f) of Section 11513.

SEC. 2. Section 11555 of the Government Code, as amended by Chapter 255 of the Statutes of 1979, is amended to read:

11555. An annual salary of twenty-six thousand two hundred fifty dollars ($26,250) shall be paid to the following:

(a) Chairman of the Board of Prison Terms
(b) Chairman of the State Water Resources Control Board
(c) Chairman of the Youthful Offender Parole Board.

SEC. 3. Section 11556 of the Government Code, as amended by Chapter 255 of the Statutes of 1979, is amended to read:

11556. An annual salary of twenty-five thousand dollars ($25,000) shall be paid to each of the following:

(a) Director of Navigation and Ocean Development
(b) Director, Office of Emergency Services
(c) Members of the Board of Prison Terms
(d) Members of the State Water Resources Control Board
(e) Members of the Youthful Offender Parole Board
(f) State Fire Marshal.

SEC. 4. Section 6025.5 of the Penal Code, as amended by Chapter 255 of the Statutes of 1979, is amended to read:

6025.5. The Director of Corrections, Board of Prison Terms, the Youthful Offender Parole Board, and the Director of the Youth Authority shall file with the Board of Corrections for information of the board or for review and advice to the respective agency as the board may determine, all rules, regulations and manuals relating to or in implementation of policies, procedures, or enabling laws.

SEC. 5. Section 13011 of the Penal Code, as amended by Chapter 255 of the Statutes of 1979, is amended to read:

13011. The department may serve as statistical and research agency to the Department of Corrections, the Board of Prison Terms, the Board of Corrections, the Department of the Youth Authority, and the Youthful Offender Parole Board.

SEC. 6. Section 13020 of the Penal Code, as amended by Chapter 255 of the Statutes of 1979, is amended to read:

13020. It shall be the duty of every constable, city marshal, ch of police, railroad and steamship police, sheriff, coroner, distr attorney, city attorney and city prosecutor having crimi jurisdiction, probation officer, county board of parole commissione work furlough administrator, the Department of Justice, Health a Welfare Agency, Department of Corrections, Department of You Authority, Youthful Offender Parole Board, Board of Prison Terr State Department of Health, Department of Benefit Payments, St Fire Marshal, Liquor Control Administrator, constituent agencies the State Department of Investment, and every other person agency dealing with crimes or criminals or with delinquency delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the corre reporting of statistical data required by him;

(b) To report statistical data to the department at such times a in such manner as the Attorney General prescribes; and

(c) To give to the Attorney General, or his accredited age access to statistical data for the purpose of carrying out the provisic of this title.

SEC. 7. Section 731 of the Welfare and Institutions Code amended to read:

731. When a minor is adjudged a ward of the court on the grou that he or she is a person described by Section 602, the court m order any of the types of treatment referred to in Sections 727 a 730, and, in addition may order the ward to make restitution or participate in uncompensated work programs or may commit t ward to a sheltered-care facility or may order that the ward and or her family or guardian participate in a program of professior counseling as arranged and directed by the probation officer a condition of continued custody of such minor or may commit t minor to the Department of the Youth Authority.

A minor committed to the Department of the Youth Authori may not be held in physical confinement for a period of time excess of the maximum period of imprisonment which could imposed upon an adult convicted of the offense or offenses whi brought or continued the minor under the jurisdiction of the juven court. Nothing in this section limits the power of the Youthf Offender Parole Board to retain the minor on parole status for t period permitted by Section 1769.

SEC. 8. Section 780 of the Welfare and Institutions Code amended to read:

780. If any person who has been committed to the You Authority appears to be an improper person to be received by retained in any institution or facility under the jurisdiction of t Youth Authority or to be so incorrigible or so incapable reformation under the discipline of any institution or facility und the jurisdiction of the Youth Authority as to render his or h retention detrimental to the interests of the Youth Authority, t Youthful Offender Parole Board may order the return of such pers

to the committing court. However, the return of any person to the committing court does not relieve the Department of the Youth Authority of any of its duties or responsibilities under the original commitment, and such commitment continues in full force and effect until it is vacated, modified, or set aside by order of the court.

When any such person is so returned to the committing court, his or her transportation shall be made, and the compensation therefor paid, as provided for the execution of an order of commitment.

SEC. 9. Section 1000.7 of the Welfare and Institutions Code is amended to read:

1000.7. As used in this chapter, "Youth Authority" "Authority" and "the Authority" mean and refer to the Department of the Youth Authority and "Board" means and refers to the Youthful Offender Parole Board.

SEC. 10. Section 1009 of the Welfare and Institutions Code is amended to read:

1009. The Youthful Offender Parole Board may order the return of nonresident persons committed to the Department of the Youth Authority or confined in institutions or facilities subject to the jurisdiction of the department to the states in which they have legal residence. Whenever any public officer (other than an officer or employee of the Youth Authority) receives from any private source any moneys to defray the cost of such transportation, he or she shall immediately transmit such moneys to the Youth Authority. All such moneys, together with any moneys received directly by the authority from private sources for transportation of nonresidents, shall be deposited by the Youth Authority in the State Treasury, in augmentation of the current appropriation for the support of the Youth Authority.

SEC. 11. Section 1176 of the Welfare and Institutions Code is amended to read:

1176. When, in the opinion of the Youthful Offender Parole Board, any person committed to or confined in any such school deserves parole according to regulations established for the purpose, and it will be to his or her advantage to be paroled, the board may grant parole under such conditions as it deems best. A reputable home or place of employment shall be provided for each person so paroled.

SEC. 12. Section 1177 of the Welfare and Institutions Code is amended to read:

1177. When any person so paroled has proved his or her ability for honorable self-support, the Youthful Offender Parole Board shall give him or her honorable discharge. Any person on parole who violates the conditions of his or her parole may be returned to the Youth Authority.

SEC. 13. Section 1178 of the Welfare and Institutions Code is amended to read:

1178. The Youthful Offender Parole Board may grant honorable discharge to any person committed to or confined in any such school.

The reason for such discharge shall be entered in the records.

SEC. 14. Section 1703 of the Welfare and Institutions Code i amended to read:

1703. As used in this chapter

(a) "Public offenses" means public offenses as that term is define in the Penal Code;

(b) "Court" includes any official authorized to impose sentenc for a public offense;

(c) "Youth Authority", "Authority", "authority" or "department means the Department of the Youth Authority;

(d) "Board" or "board" means the Youthful Offender Paro Board.

(e) The masculine pronoun includes the feminine.

SEC. 15. Article 2 (commencing with Section 1710) of Chapter of Division 2.5 of the Welfare and Institutions Code is repealed.

SEC. 16. Article 2 (commencing with Section 1710) is added t Chapter 1 of Division 2.5 of the Welfare and Institutions Code, t read:

Article 2. Department of the Youth Authority

1710. There is a Department of the Youth Authority.

1711. The Director of the Youth Authority shall be appointed b the Governor with the advice and consent of the Senate. He or sl shall hold office at the pleasure of the Governor but before th director may be removed, the procedures set forth in Section 50 of the Penal Code shall be followed. He or she shall receive an annu salary provided for by Chapter 6 (commencing with Section 1155 of Part 1 of Division 3 of Title 2 of the Government Code, and sh devote his or her entire time to the duties of his or her office.

1712. (a) All powers, duties, and functions pertaining to the ca and treatment of wards provided by any provision of law and n specifically and expressly assigned to the Youthful Offender Par Board shall be exercised and performed by the director. The direct shall be the appointing authority for all civil service positions employment in the department. The director may delegate t powers and duties vested in him or her by law, in accordance w Section 7.

(b) The director is authorized to make and enforce all ru appropriate to the proper accomplishment of the functions of Department of the Youth Authority. Such rules shall be promulga and filed pursuant to Chapter 4.5 (commencing with Section 113 of Part 1 of Division 3 of Title 2 of the Government Code, and sh to the extent practical, be stated in language that is easily underst by the general public.

(c) The Department of the Youth Authority shall maint publish, and make available to the general public, a compendiur rules and regulations promulgated by the department pursuan this section.

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(d) The following exceptions to the procedures specified in this section shall apply to the Department of the Youth Authority:

(1) The department may specify an effective date that is any time more than 30 days after the rule or regulation is filed with the Secretary of State; provided that no less than 20 days prior to such effective date, copies of the rule or regulation shall be posted in conspicuous places throughout each institution and shall be mailed to all persons or organizations who request them.

(2) The department may rely upon a summary of the information compiled by a hearing officer; provided that the summary and the testimony taken regarding the proposed action shall be retained as part of the public record for at least one year after the adoption, amendment, or repeal.

1713. (a) The Director of the Youth Authority shall have wide and successful administrative experience in youth or adult correctional programs embodying rehabilitative or delinquency prevention concepts.

(b) The Governor may request the State Personnel Board to use extensive recruitment and merit selection techniques and procedures to provide a list of persons qualified for appointment as Director of the Youth Authority. The Governor may appoint any person from such list of qualified persons or may reject all names and appoint another person who meets the requirements of this section.

1714. (a) It is the intention of the Legislature that the Youthful Offender Parole Board and the Director of the Youth Authority shall cooperate with each other in the establishment of the classification, transfer, discipline, training, and treatment policies of the Department of the Youth Authority, to the end that the objectives of the state youth correctional system can best be attained. The director and the board shall, not less than four times each calendar year, meet for the purpose of discussion of classification, transfer, discipline, training, and treatment policies and problems, and for the purpose of discussion of policies relating to the functions and duties of the board, and it is the intent of the Legislature that whenever possible there shall be agreement on these subjects; however in order to maintain responsibility for the secure and orderly administration of the Youth Authority, the Director of the Youth Authority shall have the final right to determine the policies on classification, transfer, discipline, training and treatment, and the board shall have the final right to determine the policies on its duties and functions.

(b) The Director of the Youth Authority may transfer persons confined in one institution or facility of the Department of the Youth Authority to another. The Youthful Offender Parole Board may request the director to transfer a person who is under the jurisdiction of the department pursuant to Section 1731.5 if, after review of the case history in the course of routine procedures, such transfer is deemed advisable for the further diagnosis and treatment of the ward. The director shall as soon as practicable comply with such

request, provided that, if facilities are not available he or she sha report that fact to the board and shall make the transfer as soon a facilities become available; provided further, that if in the opinion c the director such transfer would endanger security he or she ma report that fact to the board and refuse to make such transfer.

1715. From funds available for the support of the Yout Authority, the director may reimburse persons employed by th authority and certified as radiologic technologists pursuant t Chapter 7.4 (commencing with Section 25660) of Division 20 of th Health and Safety Code for the fees incurred both in connection wit the obtaining of such certification since July 1, 1971, and with regar to the renewal thereof.

SEC. 17. Article 2.5 (commencing with Section 1716) is added t Chapter 1 of Division 2.5 of the Welfare and Institutions Code, t read:

Article 2.5. Youthful Offender Parole Board

1716. (a) There is a Youthful Offender Parole Board, which sha be composed of seven members, each of whom shall be appointed b the Governor, with the advice and consent of the Senate, for a ter of four years and until the appointment and qualification of his or he successor, and who shall devote their entire time to its work.

(b) The individuals who were members of the Youth Authorit Board immediately prior to the effective date of this section, othe than the individual who was Director of the Department of th Youth Authority and Chairman of the Youth Authority Board, sha continue in their respective terms of office as members of th Youthful Offender Parole Board. The term of the member appointe to the term commencing March 15, 1976 shall expire March 15, 198 The terms of the two members appointed to the terms commencin March 15, 1977 shall expire March 15, 1981. The terms of the tw members appointed to the terms commencing March 15, 1978 sha expire March 15, 1982. The terms of the two members appointed t the terms commencing March 15, 1979 shall expire March 15, 198 The members shall be eligible for reappointment and shall hol office until the appointment and qualification of their successor with the term of each new appointee to commence on the expiratic date of the term of his or her predecessor.

(c) All appointments to a vacancy occurring by reason of ar cause other than the expiration of a term shall be for the unexpire term. Each member shall hold office until the appointment ar qualification of his or her successor.

(d) If the Senate, in lieu of failing to confirm, finds that it cann consider all or any of the appointments to the Youthful Offend Parole Board adequately because the amount of legislative busine and the probable duration of the session does not permit, it m adopt a single house resolution by a majority vote of all membe elected to the Senate to that effect and requesting the resubmissi

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of the unconfirmed appointment or appointments at a succeeding session of the Legislature, whether regular or extraordinary, convening on or after a date fixed in the resolution. This resolution shall be filed immediately after its adoption in the office of the Secretary of State and the appointee or appointees affected shall serve subject to later confirmation or rejection by the Senate.

1717. (a) Persons appointed to the Youthful Offender Parole Board shall have a broad background in and ability for appraisal of youthful law offenders and delinquents, the circumstances of delinquency for which committed, and the evaluation of the individual's progress toward reformation. Insofar as practicable, members shall be selected who have a varied and sympathetic interest in youth correction work including persons widely experienced in the fields of corrections, sociology, law, law enforcement, and education.

(b) The selection of persons and their appointment by the Governor and confirmation by the Senate shall reflect as nearly as possible a cross section of the racial, sexual, economic, and geographic features of the state.

(c) One member of the board shall be designated as chairman by the Governor. The chairman shall be the administrative head of the board and shall exercise all duties and functions necessary to insure that the responsibilities of the board are successfully discharged. He or she shall be the appointing authority for all civil service positions of employment in the board.

1718. (a) The chairman and members of the board shall receive an annual salary as provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code and their actual necessary traveling expenses to the same extent as is provided for other state offices.

(b) The Governor may remove any member of the board for misconduct, incompetency or neglect of duty after a full hearing by the Board of Corrections.

1719. The following powers and duties shall be exercised and performed by the Youthful Offender Parole Board as such, or may be delegated to a panel, member, or case hearing representative as provided in Section 1721: return of persons to the court of commitment for redisposition by the court, discharge of commitment, orders to parole and conditions thereof, revocation or suspension of parole, recommendation for treatment program, determination of the date of next appearance, return of nonresident persons to the jurisdiction of the state of legal residence.

1720. (a) The case of each ward shall be heard by the board immediately after the case study of the ward has been completed and at such other times as is necessary to exercise the powers or duties of the board.

(b) The board shall periodically review the case of each ward for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. These